

# **PROTOCOL TO THE TREATY ON INVESTMENT AND TRADE IN SERVICES BETWEEN THE REPUBLICS OF COSTA RICA, EL SALVADOR, GUATEMALA, HONDURAS AND NICARAGUA**

The Governments of the Republics of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua,

CONSIDERING:

That the Central American Presidents signed the Treaty on Investment and Trade in Services between the Republics of Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua, on March 24, two thousand two;

That the deepening of economic integration among the Central American countries is the most effective means of promoting the future economic and social development of the region and of each one of them, in order to raise the welfare of its peoples;

That new commitments related to investment and trade in services make it necessary to update the instruments related to this subject within the framework of the Central American Economic Integration Subsystem,

Then:

Decide to amend the Treaty on Investment and Trade in Services between the Republics of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua signed on March 24, 2000 by means of this Protocol:

## **Article 1.**

The Treaty on Investment and Trade in Services between the Republics of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua signed on 24 March 2002 in the articles listed in Annex A to this Protocol is hereby amended.

## **Article 2.**

For more certainty, Annex B to this Protocol contains the amended text of the Treaty on Investment and Trade in Services between the Republics of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua.

## **Article 3.**

This Protocol shall have indefinite duration and shall come into force for the first two (2) depositor States, thirty (30) days after the date of deposit with the General Secretariat of the Central American Integration System (SG-SICA)

The second instrument of ratification, and for the other depositor States, eight (8) days after the date of deposit of its respective instrument.

In witness whereof, the undersigned, duly authorized by their respective Governments, have signed this Protocol in the City of Belize, Belize, on the twenty-second day of February in the year two thousand and seven.

For the Republic of Costa Rica

Amparo Pacheco Oreamuno Deputy Minister of Foreign Trade

For the Republic of El Salvador

Yolanda Mayora de Gavidia Minister of Economy

For the Republic of Guatemala

Enrique Lacs Palomo Deputy Minister of Integration and Foreign Trade

For the Republic of Honduras

Miriam Elizabeth Azcona Bocock Secretary of State in the Offices of Industry and Commerce

For the Republic of Nicaragua

Horacio Brenes Icabalceta Minister of Development, Industry and Commerce

## **Annex A**

The following amendments are made to the Treaty on Investment and Trade in Services between the Republics of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua, which are listed below:

### **CHAPTER 1:**

Articles: 1.01 and 1.03 are modified.

Article 1.04 is eliminated.

### **CHAPTER 2:**

Article 2.01 is amended.

### **CHAPTER 3:**

Articles: 3.01, 3.02, 3.03, 3.05, 3.06, 3.07, 3.08, 3.09, 3.10, 3.11, 3.14, 3.16, 3.17, 3.20, 3.22, 3.23, 3.24, 3.25, 3.28, 3.29, 3.33, 3.34, 3.35, 3.37 and the following are modified.

Annexes: 3.11 and 3.39 (2).

Articles 3.13, 3.15, 3.18, 3.19, 3.21, 3.26, 3.27, 3.30, 3.31, 3.32, 3.36, 3.38, 3.39, 3.40 and Annex 3.22 are eliminated.

Articles: 3.21, 3.22 and 3.28 are added.

### **CHAPTER 4:**

Articles: 4.01, 4.02, 4.03, 4.04, 4.06, 4.08, 4.09, 4.12, 4.13, 4.14 and 4.15 and Annex 4.13 are amended.

Articles 4.07, 4.10, 4.11 and 4.16 are deleted.

Articles: 4.06, 4.08, 4.11, 4.12, 4.13 and Annex 4.10 are added.

### **CHAPTER 5:**

Articles: 5.02 and 5.03 are modified.

Articles: 5.01, 5.04, 5.05, 5.06, 5.07, 5.08, 5.09, 5.10 and 5.11 and Annexes: 5.02 and 5.04 are deleted.

Articles: 5.03, 5.04, 5.05, 5.06, 5.07, 5.08, 5.09, 5.10, 5.11, 5.12, 5.13, 5.14, 5.15, 5.16 and 5.17 are added and Annexes: 5 and 5.04.

### **CHAPTER 6:**

Articles: 6.01, 6.02, 6.03, 6.05, 6.06, 6.07, 6.09, 6.10, 6.11, 6.12, 6.13, 6.14, 6.15, 6.16, 6.19 and 6.20 are amended.

Articles 6.04, 6.17, 6.18, and Annex 6.10 are eliminated.

Articles: 6.05, 6.11, 6.12, 6.13 and 6.17 and Annexes: 6.06, 6.18, 6.19.2 and 6.19.3 are added.

### **CHAPTER 7:**

Articles: 7.01, 7.04, 7.05, 7.06 and 7.07 and Appendix 7.04 (A)(2) are amended.

## CHAPTER 8:

Articles 8.02, 8.03, 8.04, 8.05 and 8.06 are amended.

Appendix 8.06 is added.

## CHAPTER 9:

Articles: 9.01, 9.03 and 9.04 are modified.

Article 9.02 and Annexes: 9.02 and 9.03 are deleted.

Article 9.02 and Annex 9.03.2 are added.

## CHAPTER 10:

Articles: 10.01, 10.05 and 10.06 are modified.

Article 10.08 is deleted.

## CHAPTER 11:

Articles: 11.07 and 11.09 are amended.

Articles: 11.01, 11.02 and 11.08 are deleted.

The following Articles are added: 11.01 and 11.02.

## **Annex B**

This Annex incorporates the new text version of the Treaty on Investment and Trade in Services between the Republics of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua:

### PREAMBLE

The Governments of the Republics of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua,

Decided to:

Achieve a better balance in your business relationships;

To promote a more extensive and secure market for investments and the exchange of services in their territories;

To increase the competitiveness of the services sector, a sine qua non requirement for the facilitation of trade in goods and the flow of capital and technologies, making a decisive contribution to consolidating the systematic competitiveness of the Parties;

Establish a legal system with clear, transparent and mutually beneficial rules for the promotion and protection of investments, as well as for trade in services;

Respect their respective rights and obligations under the Marrakesh Agreement establishing the World Trade Organization (WTO Agreement), as well as other bilateral and multilateral integration and cooperation instruments;

Create job opportunities and improve living standards in their respective countries; and

Encourage the dynamic participation of the various economic agents, in particular the business sector, in efforts to deepen their economic relations;

Subscribe to this Treaty on Investment and Trade in Services

## **Chapter 1. Initial Provisions**

### **1.01. Objectives**

1. The main objectives of this Treaty are:

(A) to establish a legal framework for the liberalization of trade in services and for investment between the Parties,

consistent with the General Treaty on Central American Economic Integration, the General Agreement on Trade in Services (GATS) forming part of the Agreement On the WTO, as well as other bilateral and multilateral integration and cooperation instruments.

Such a framework shall promote the interests of the Parties, on the basis of reciprocal advantages and the achievement of an overall balance of rights and obligations between the Parties;

(B) to stimulate the expansion and diversification of trade in services and investment between the Parties;

(C) to facilitate the provision of services between the Parties;

(D) promote, protect and substantially increase investments in each Party; and

(E) to establish effective procedures for the implementation and enforcement of this Agreement, for their joint administration and for the settlement of disputes between a Party and an investor of another Party.

2. The Parties shall interpret and apply the provisions of this Treaty in the light of the objectives set out in paragraph 1 and in accordance with the applicable rules of international law.

## **1.02. Observance of the Treaty**

Each Party shall, in accordance with its constitutional rules, ensure compliance with the provisions of this Treaty in its respective territory.

## **1.03. Relationship with other Treaties**

1. The Parties confirm the rights and obligations in force between them in accordance with the treaties to which they are parties. 2

2. The Parties recognize that this Agreement is confined to the Subsystem of Central American Economic Integration and coexists with other international instruments subscribed or in force between the Parties that regulate the matters that are the object of this Treaty, without such coexistence implying the modification or substitution thereof.

3 For the sake of certainty, nothing in this dispute shall be dealt with by the Parties in the framework of the Central American Economic Integration Subsystem.

# **Chapter 2. DEFINITIONS OF GENERAL APPLICATION**

## **2.01. Definitions of General Application**

For the purposes of this Agreement, unless otherwise specified, the following definitions shall apply:

Agreement on the WTO: the Marrakesh Agreement Establishing the World Trade Organization, dated 15 April 1994;

GATS: the General Agreement on Trade in Services, which form part of the WTO Agreement;

TRIPS Agreement: the Agreement on Trade-Related Aspects of Intellectual Property Rights, which form part of the WTO Agreement;

Public procurement: the process by which a government acquires the use of or acquires goods or services, or any combination thereof, for governmental purposes and not for commercial sale or resale or for use in the production or supply of Goods or services for commercial sale or resale;

Council: the Council of Ministers of Economic Integration created by Article 37 of the Guatemala Protocol;

Days: calendar days;

Enterprise: any legal entity incorporated or organized under the applicable law of a Party, whether or not for profit and whether private or governmental, including foundations, partnerships, trusts, holdings, sole proprietorships, joint ventures or other associations;

Undertaking of a Party: a company incorporated or organized in accordance with the law of a Party;

State enterprise: a company owned or controlled by a Party, by means of domain rights;

Existing: in force on the date of entry into force of this Agreement; Measure: includes any law, regulation, procedure, requirement or practice; Goods: any material, material, product or part;

National: a natural or natural person who has the nationality of a Party in accordance with its legislation and its permanent residents, who shall enjoy the benefits, rights and obligations which this Treaty grants to nationals, only with respect to the application of the Treaty;

Party: any State in respect of which this Treaty has entered into force;

Person: a national or a company;

SG-SICA: General Secretariat of the Central American Integration System; And territory: the territory of each of the Parties.

## **Chapter 3. Investment**

### **Section A. Investment**

#### **3.01. Definitions**

For the purposes of this Chapter, the following definitions shall apply:

Center: the International Center for Settlement of Investment Disputes ("ICSID") established by the ICSID Convention;

Inter-American Convention: The Inter-American Convention on International Commercial Arbitration, held in Panama on January 30, 1975;

ICSID Convention: The Convention on the Settlement of Investment Disputes between States and Nationals of Other States, done at Washington, D.C., on March 18, 1965;

New York Convention: The United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, held at New York on 10 June 1958;

Defendant: the Party that is party to a dispute relating to an investment;

Applicant: the investor of a Party that is party to a dispute relating to investments with another Party;

Enterprise: an "enterprise", as defined in Article 2.01 (Definitions of general application), and the branch of an enterprise;

Protected information: confidential business information or privileged information or otherwise protected from disclosure in accordance with the Party's law;

Investment: any asset owned or controlled by an investor, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of profit or profit or assuming risk. The forms that an investment can take include:

- a) an undertaking;
- b) shares, capital and other forms of equity participation in a company;
- c) bonds, bonds, other debt instruments and loans; (1) (2)

(1) Some forms of debt, such as bonds, bonds and long-term notes, are more likely to have the characteristics of an investment, while other forms of debt are less likely to have these characteristics.

(2) For the purposes of this Agreement, claims for payment that are immediately due and which are the result of the sale of goods or services are not investments.

d) futures, options and other derivatives;

e) turnkey contracts for construction, management, production, concession, revenue sharing and other similar contracts;

f) intellectual property rights;

g) licenses, authorizations, permits and similar rights granted in accordance with domestic legislation; (3) (4)

(3) The fact that a type of license, authorization, permit or similar instrument (including a concession, to the extent that it has the nature of such an instrument), has the characteristics of an investment depends on factors such as nature and The extent of the rights of the holder in accordance with the Party's law. Among licenses, authorizations, permits or similar instruments that do not have the characteristics of an investment are those that do not generate rights protected under domestic law. For greater certainty, the foregoing is without prejudice that an asset associated with such license, authorization, permit or similar instrument has the characteristics of an investment.

(4) The term "investment" does not include an order or judgment within a judicial or administrative process.

h) other tangible or intangible, movable or immovable property rights and related property rights, such as leases, mortgages, liens and pledges;

An investor of a Party: a Party or a State enterprise, or a person of that Party, who performs physical acts for the purpose of making an investment or, if applicable, an investment in the territory of another Party. The intention to carry out an investment may be manifested, inter alia, through legal acts tending to materialize the investment, or being in the process of compromising the economic resources necessary to realize it; However, a natural or natural person who has dual nationality shall be considered exclusively a national of the State of his dominant and effective nationality;

Investor of a non-Party: an investor who is not an investor of a Party that intends to carry out, makes or has made an investment;

Freely usable currency: the currency of free use as determined in accordance with the Articles of Agreement of the International Monetary Fund;

Disputing party: the plaintiff or the defendant;

Disputing parties: the plaintiff and the defendant;

Non-disputing party: the Party not party to a dispute relating to an investment;

UNCITRAL Arbitration Rules: The Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), adopted by the General Assembly of the United Nations on 15 December 1976;

Rules of the ICSID Supplementary Mechanism: the Supplementary Mechanism Regulation for Procedural Administration by the Secretariat of the International Center for Settlement of Investment Disputes;

Secretary General: the Secretary General of ICSID;

Court: an arbitral tribunal established under Article 3.20 and Article 3.26.

## **3.02. Scope**

1. This Chapter applies to measures adopted or maintained by a Party relating to:

- a) investors of another Party;
- b) investments of investors of another Party carried out in the territory of the Party; and
- c) with respect to Articles 3.07 and 3.14 all investments in the territory of the Party.

2. This Chapter does not apply to:

- a) measures adopted or maintained by a Party in the area of financial services;
- b) measures taken by a Party to restrict the participation of investments of investors of another Party in its territory, for reasons of national security or public order; and
- c) disputes or claims arising prior to the entry into force of this Agreement, or related to events occurring prior to its effectiveness, even if their effects remain even after this.

3. The obligations of the Parties established under this Section shall apply to a State enterprise or other person when executing a regulatory, administrative or other governmental authority delegated by that Party.

4. No provision of this Chapter shall be construed to prevent a Party from providing services or performing functions related to law enforcement, social rehabilitation services, pension or unemployment insurance or social security services, social welfare, Public education, health and child protection.

5. In the case of any inconsistency between this Chapter and another Chapter, the other Chapter shall prevail to the extent of inconsistency.

### **3.03. Minimum Level of Treatment**

1. Each Party shall accord to investments of investors of another Party treatment consistent with customary international law, including fair and equitable treatment, as well as full protection and security within its territory.

2. For greater certainty, paragraph 1 prescribes that the minimum level of treatment of foreigners under customary international law is the minimum level of treatment to be accorded to investments of investors of another Party. The concepts of "fair and equitable treatment" and "full protection and security" do not require additional treatment or beyond that required by that level, and do not create additional substantive rights. The obligation in paragraph 1 to grant:

a) "fair and equitable treatment" includes the obligation not to deny justice in criminal, civil or administrative proceedings, in accordance with the principle of due process embodied in the principal legal systems of the world; and

b) "full protection and security" requires each Party to provide the level of police protection required by customary international law.

3. The determination that another provision of this Agreement or other international agreement has violated does not establish that this Article has been violated.

4. The Parties confirm their common understanding that customary international law referred to in Articles 3.03 and Annex 3.11 results from a general and consistent practice of States followed by them in the sense of a legal obligation. With respect to Article 3.03, the minimum standard of treatment of aliens in customary international law refers to all principles of customary international law which protect the rights and economic interests of aliens.

### **3.04. National Treatment**

Each Party shall accord to the investor of another Party and to the investment of an investor of another Party treatment no less favorable than that it accords in similar circumstances to its own investors and investments of such investors with respect to the establishment, acquisition, Expansion, administration, conduct, operation, sale or other disposition of the investments.

### **3.05. Most-favored-nation Treatment**

1. Each Party shall accord to the investor of another Party and to the investment of an investor of another Party treatment no less favorable than that accorded in similar circumstances to the investor and to the investment of an investor of any other Party or of a country Not Party, with respect to the establishment, acquisition, expansion, administration, conduct, operation, sale or other disposition of the investments.

2. Most-favored-nation treatment to be accorded in similar circumstances does not extend to dispute settlement mechanisms, such as those contained in Section B of this Chapter, which are provided for in international investment treaties or agreements.

### **3.06. Treatment In Case of Losses**

Each Party shall accord to the investor of another Party and to the investment of an investor of another Party non-discriminatory treatment with respect to the measures that it adopts or maintains in relation to losses suffered by investments in its territory due to armed conflicts or civil strife.

### **3.07. Performance Requirements**

1. No Party may impose or enforce the following requirements or commitments in relation to the establishment, acquisition, expansion, administration, conduct, operation, sale or any other disposition of an investment of an investor of a Party or of a non-Party in its territory to:

- a) export a particular type, level or percentage of goods or services;
- b) reach a certain degree or percentage of national content;
- c) acquire, use or give preference to goods produced in its territory, or acquire goods from producers in its territory;
- d) relate in any way the volume or value of imports with the volume or value of exports, or with the amount of the foreign exchange inflows associated with such investment;
- e) restrict sales in its territory of the goods or services that such investment produces or lends, relating in any way such sales to the volume or value of their exports or to profits generated in foreign currency;
- f) transfer to a person in its territory, technology, production process or other reserved knowledge, except:
  - (i) where the requirement is imposed by a court or administrative court or competent authority to remedy an alleged breach of competition law or to act in a manner that is not inconsistent with other provisions of this Agreement; or
  - (ii) where a Party authorizes the use of an intellectual property right in accordance with Article 31 of the TRIPs Agreement or measures requiring the disclosure of proprietary information within the scope of application and consistent with Article 39 of the TRIPs Agreement.
- g) act as the exclusive supplier of the goods it produces or services that it provides for a specific, regional or global market.

2. The measure requiring an investment to employ a technology to meet generally applicable health, environment or safety requirements shall not be considered incompatible with paragraph 1 (f). To provide greater certainty, Articles 3.04 and 3.05 apply to said measure.

3. Neither Party may condition the receipt of an advantage or continue to receive it in connection with the establishment, acquisition, expansion, administration, conduct, operation, sale or any other disposition of an investment in its territory by Of an investor of a Party or of a non-Party, to the fulfillment of any of the following requirements:

- a) to acquire, use or give preference to goods produced in its territory or to purchase goods from producers in its territory;
- b) reach a certain degree or percentage of national content;
- c) relate in any way the volume or value of imports with the volume or value of exports, or the amount of the foreign exchange inputs associated with such investment; or
- d) to restrict sales in its territory of the goods or services that such investment produces or lends, relating in any way such sales to the volume or value of its exports or to profits generated in foreign currency.

4. Nothing in paragraph 3 shall be construed as an impediment for a Party in its territory to impose, in relation to an investment of an investor of another Party or of a non-Party, legally established requirements of: geographical location of Productive units, generation of employment or training of labor, or carrying out activities in the field of research and development.

5. Whenever such measures are not applied arbitrarily or unreasonably, or do not constitute a disguised restriction on international trade or investment, nothing in paragraphs 1 (b), (c) and (f) and 3 (a) and (b) shall be interpreted In order to prevent a Party from adopting or maintaining measures, including those of an environmental nature, necessary to:

- a) ensure compliance with laws and regulations that are not inconsistent with the provisions of this Agreement;
- b) protect human, animal or plant life or health; or
- c) the preservation of living or non-living natural resources.

6. Paragraphs 1 (a), (b) and (c) and 3 (a) and (b) shall not apply to qualification requirements for goods or services in respect of export promotion and external aid programs.

7. Paragraphs 1 (b), (c), (f) and (g) and 3 (a) and (b) shall not apply to public procurement.

8. Paragraphs 3 (a) and (b) shall not apply to requirements imposed by an importing Party with respect to the contents of the goods necessary to qualify for preferential tariffs or quotas.

9. This Article does not exclude the application of any commitment, obligation or requirement between private parties where a Party has not imposed or required the commitment, obligation or requirement.



10. For greater certainty, paragraphs 1 and 3 do not apply to any requirement other than those referred to in those paragraphs.

### **3.08. Senior Corporate Management and Boards of Directors**

1. No Party may require an enterprise of that Party to designate natural persons of any particular nationality to hold senior management positions.

2. A Party may require that a majority of the members of the administrative bodies or of any committee of such bodies of an enterprise of that Party which is an investment of an investor of another Party be of a particular nationality, Resident in the territory of the Party, provided that the requirement does not significantly impair the ability of the investor to exercise control of its investment.

### **3.09. Reservations and Exceptions**

1. Articles 3.04, 3.05, 3.07 and 3.08 do not apply to:

a) any existing non-conforming measure maintained by a Party in:

(i) central level government, as established by that Party in its Schedule to Annex I (Non-Conforming Measures), or

(ii) a local level government;

(b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or

(c) an amendment to any non-conforming measure referred to in subparagraph (a) provided that such amendment does not diminish the conformity of the measure, as it was in force immediately before the amendment, with Articles 3.04, 3.05, 3.07 or 3.08.

2. Articles 3.04, 3.05, 3.07 and 3.08 do not apply to any measure that a Party adopts or maintains in relation to sectors, subsectors or activities, as indicated in its Schedule to Annex II (Future Measures).

3. No Party shall, in accordance with any measure taken after the date of entry into force of this Treaty and included in its Schedule to Annex II (Future Measures), require an investor of another Party, by reason of his or her nationality, Which sells or otherwise disposes of an existing investment at the time the measure becomes effective.

4. Articles 3.04, 3.05 and 3.08 do not apply to:

a) public procurement; or

b) subsidies or grants awarded by a Party, including government-supported loans, guarantees and insurance.

5. With a view to achieving a progressively higher level of liberalization and after prior instruction by the Council, the Parties undertake to conduct future negotiations aimed at eliminating the remaining non-conforming measures listed in accordance with paragraph 1 of this Article.

### **3.10. Transfers**

1. Each Party shall permit all transfers related to the investment of an investor of another Party in its territory to be made freely and without delay. These transfers include:

a) profits, dividends, interest, capital gains, royalty payments, administrative expenses, technical assistance and other charges, profits in kind and other amounts derived from the investment;

b) products derived from the sale or liquidation, total or partial, of the investment;

c) payments made under a contract to which an investor is party or its investment, including payments made under a loan agreement;

d) payments made in accordance with Articles 3.06 and 3.11; and

e) payments arising from the application of the provisions relating to the dispute settlement mechanism contained in Section B of this Chapter.

2. For the purposes of this Chapter, a transfer shall be deemed to have been made without delay when it has been effected within the period normally required for the completion of the transfer formalities.
3. No Party may require its investors to transfer their income, profits, or profits or other amounts derived from, or attributable to, investments carried out in the territory of another Party, nor shall they sanction them if they do not transfer.
4. Each Party shall permit transfers to be made in freely usable currency at the prevailing market rate of exchange on the date of transfer.
5. Notwithstanding paragraphs 1 and 4, each Party may prevent the transfer, through the equitable, non-discriminatory and good faith application of measures relating to:
  - a) bankruptcy, insolvency or protection of the rights of creditors;
  - b) issuance, trading or operations of securities, futures, options or derivatives;
  - c) financial reporting or record keeping of transfers where necessary to collaborate with law enforcement or financial regulatory authorities;
  - d) criminal offenses; or
  - e) guarantee of compliance with orders or rulings in judicial or administrative proceedings.
6. Notwithstanding the provisions of this Article, each Party may establish temporary controls on foreign exchange transactions, provided that the balance of payments of the Party concerned presents a serious imbalance or exceptional or serious difficulties, and implements a program in accordance with internationally accepted criteria.

### **3.11. Expropriation and Compensation**

1. No Party may nationalize or expropriate, directly or indirectly, an investment of an investor of a Party in its territory, or adopt any measure equivalent to the expropriation or nationalization of such investment, unless it is:
  - a) because of public purpose in accordance with the provisions of Annex 3.11;
  - b) on a non-discriminatory basis;
  - c) in accordance with the principle of due process and Article 3.03; Y
  - d) through compensation under paragraphs 2 to 4.
2. The compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation measure has been carried out (date of expropriation), and shall not reflect any change in value, because the intention to expropriate has been known in advance the date of expropriation. The valuation criteria will include the declared tax value of tangible assets, as well as other criteria that are appropriate to determine the fair market value.
3. The payment of compensation will be made without delay, will be fully liquidable and freely transferable.
4. The amount paid shall not be less than the equivalent amount that would have been paid in a freely usable currency in the international financial market on the date of expropriation and this currency would have been converted to the market price in force in the Date of valuation, plus interest that would have generated at a bank or commercial rate up to the date of the day of payment.
5. This Article does not apply to the issuance of compulsory licenses granted in relation to intellectual property rights under the TRIPS Agreement, or to the revocation, limitation or creation of intellectual property rights; To the extent that such issuance, revocation, limitation or creation is consistent with the Parties' multilateral international obligations in this regard.
6. This Article shall be interpreted in accordance with Annex 3.11.

### **3.12. Special Formalities and Information Requirements**

1. Nothing in Article 3.04 shall be construed to prevent a Party from adopting or maintaining a measure which prescribes special formalities connected with the establishment of investments by investors of another Party, such as investments being constituted in accordance with Legislation of the Party, provided that such formalities do not substantially impair the protection afforded by a Party under this Chapter.

2. Notwithstanding Articles 3.04 and 3.05, each Party may require in its territory an investor of another Party to provide routine information regarding its investment solely for information or statistical purposes. The Party shall protect information that is confidential, from any disclosure that would adversely affect the competitive position of the investor or the investor.

### **3.13. Denial of Benefits**

A Party may, upon prior notice and consultation with another Party, deny the benefits of this Chapter to an investor of that Party who is a company of the same and to the investments of such an investor if investors of a non-Party own majority or control The company and it has no substantial business activities in the territory of the Party according to whose law is constituted or organized.

### **3.14. Measures Relating to the Environment**

Nothing in this Chapter shall be construed as an impediment for a Party to adopt, maintain or enforce any measure otherwise compatible with this Chapter which it deems appropriate to ensure that investment activities in its territory are carried out taking into account Environmental concerns.

### **3.15. Promotion of Investments and Exchange of Information**

1. In order to significantly increase the mutual participation of investments, Parties may promote and support the development of documents to promote investment opportunities and the design of mechanisms for their dissemination. Likewise, Parties may create, maintain and improve financial mechanisms to make viable the investments of one Party in the territory of another Party.

2. The Parties shall make available information on opportunities for:

- a) investment in its territory, which may be developed by investors of another Party;
- b) strategic alliances between investors of the Parties, through research and the combination of interests and opportunities for partnership; and
- c) investment in specific economic sectors of interest to Parties and their investors, at the express request of any Party.

3. In order to be kept up to date and informed, Parties should exchange information on:

- a) legislation that directly or indirectly affects foreign investment including, inter alia, exchange rate and fiscal regimes;
- b) the behavior of foreign investment in their respective territories; and
- c) the investment opportunities referred to in paragraph 2 of this Article, including the dissemination of available financial instruments that contribute to the increase of investment in the territory of the Parties.

## **Section B. Investor-State Dispute Settlement**

### **3.16. Consultation and Negotiation**

In the case of an investment dispute, the plaintiff and the respondent must first seek settlement of the dispute through consultation and negotiation, which may include the use of non-binding third party proceedings such as conciliation and mediation.

### **3.17. Submission of a Claim to Arbitration**

1. In the event that a disputing party considers that a dispute concerning an investment through consultation and negotiation can not be resolved:

- a) the claimant, on his own account, may submit to arbitration a claim under this Section alleging that the defendant has breached an obligation under Section A and that the claimant has suffered loss or damage in By virtue of said violation or as a result thereof; and
- b) the claimant, on behalf of an enterprise of the defendant that is a legal person owned by the plaintiff or under its direct or indirect control, may, in accordance with this Section, submit to arbitration a claim alleging that the defendant Has breached

an obligation under Section A and that the company has suffered losses or damages by virtue of or as a result of said breach.

2. At least ninety (90) days before a claim for arbitration under this Section is submitted, the claimant shall deliver to the defendant a written notice of his intention to submit the claim to arbitration ("notice of intent"). The notification shall specify:

- a) the name and address of the claimant and, in the case where the claim is submitted on behalf of an undertaking, the name, address and place of incorporation of the undertaking;
- b) for each claim, the provision of this Treaty allegedly violated and any other applicable provision;
- c) the issues of fact and law on which each complaint is based; and
- d) the reparation requested and the approximate amount of damages claimed.

3. Whenever six (6) months have elapsed since the events giving rise to the claim, the claimant may submit the claim referred to in paragraph 1:

- a) in accordance with the ICSID Convention and the Rules of Procedure for ICSID Arbitral Proceedings, provided that both the defendant and the Claimant's Party are parties to the ICSID Convention;
- b) in accordance with the Additional Facility Rules of ICSID, provided that the defendant or the Claimant's Party is a party to the ICSID Convention; or
- c) in accordance with the UNCITRAL Arbitration Rules.

4. A claim shall be deemed to be submitted to arbitration under this Section when the notice or request for arbitration ("notice of arbitration") of the claimant:

- a) referred to in paragraph 1 of Article 36 of the ICSID Convention is received by the Secretary-General;
- b) referred to in Article 2 of Annex C to the ICSID Supplementary Mechanism Rules be received by the Secretary-General; or
- c) referred to in Article 3 of the UNCITRAL Arbitration Rules, together with the writ of claim referred to in Article 18 of the UNCITRAL Arbitration Rules, is received by the defendant.

A claim raised for the first time after such notice of arbitration has been submitted shall be deemed to have been submitted to arbitration under this Section on the date of its receipt under applicable arbitration rules.

5. The arbitration rules applicable in accordance with paragraph 3, and which are in force on the date of the claim or claims that have been submitted to arbitration under this Section, will govern the arbitration except to the extent that they are modified by this Treaty.

6. The claimant shall deliver together with the notice of arbitration:

- a) the name of the arbitrator appointed by the claimant; or
- b) the plaintiff's written consent for the Secretary-General to appoint such arbitrator.

### **3.18. Consent of Each Party to Arbitration**

1. Each Party consents to submit a claim to arbitration under this Section and in accordance with this Agreement.

2. The consent referred to in paragraph 1 and the submission of the claim to arbitration under this Section shall comply with the requirements indicated in:

- a) Chapter II of the ICSID Convention (Jurisdiction of the Center) and the Additional Facility Rules of ICSID requiring the written consent of the parties to the dispute;
- b) Article II of the New York Convention requiring a "written agreement"; and
- c) Article I of the Inter-American Convention that requires an "agreement".

### **3.19. Conditions and Limitations on the Consent of the Parties**

1. No claim may be submitted to arbitration under this Section, if more than three (3) years have elapsed from the date on which the claimant had or should have been aware of the alleged violation pursuant to Article 3.17.1 and knowledge that the claimant (for claims under Article 3.17.1 (a)), or the company (for claims under Article 3.17.1 (b)) suffered loss or damage.

2. No claim may be submitted to arbitration under this Section unless:

a) the applicant consents in writing to submit to arbitration, in accordance with the procedures provided for in this Treaty; and

b) the notice of arbitration is accompanied,

(i) the complainant's written waiver of claims submitted to arbitration under Article 3.17.1 (a); and

(ii) the written resignations of the claimant and the company to claims submitted to arbitration under Article 3.17.1 (b)

Of any right to initiate or continue before any judicial or administrative tribunal under the law of either Party, or other dispute settlement procedures, 5 any action in respect of any measure alleged to have constituted a violation to which it refers Article 3.17.

3. Notwithstanding paragraph 2 (b), the complainant (for claims under Article 3.17.1 (a)) and the plaintiff or the enterprise (for claims under Article 3.17.1 (b)) may initiate Or continue with an action requesting the application of precautionary measures of a suspensive, declaratory or extraordinary nature, and not involving the payment of monetary damages before a judicial or administrative court of the defendant, provided that the action is brought only for the purpose of Preserve the rights and interests of the plaintiff or the company during the waiting period of the arbitration. (5)

(5) For greater certainty, these include national and international dispute settlement procedures.

### **3.20. Selection of Arbitrators**

1. Unless otherwise agreed by the disputing parties, the tribunal shall consist of three (3) arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, shall be appointed by agreement of the disputing parties.

2. The Secretary-General shall serve as the authority to designate arbitrators in arbitration proceedings under this Section.

3. Where a tribunal does not form part of the tribunal within seventy-five (75) days from the date on which the claim is submitted to arbitration in accordance with this Section, the Secretary-General, at the request of a disputing party, Shall designate, at its discretion, the arbitrator or arbitrators who have not yet been appointed.

4. For the purposes of Article 39 of the ICSID Convention and Article 7 of Part C of the ICSID Additional Facility Rules and without prejudice to objecting to an arbitrator for reasons other than nationality:

a) the defendant accepts the appointment of each member of the tribunal established under the ICSID Convention or the ICSID Additional Facility Rules;

b) the claimant referred to in Article 3.17.1 a) may submit a claim under this Section to arbitration, or continue a claim under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that The complainant gives written consent to the appointment of each member of the court; and

c) the claimant referred to in Article 3.17.1 (b) may submit a claim to arbitration under this Section, or continue a claim under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that The plaintiff and the company state their written consent to the appointment of each member of the court.

### **3.21. Conduct of Arbitration**

1. The disputing parties may agree in the legal seat where any arbitration is to be held in accordance with the applicable arbitration rules in accordance with Article 3.17.3. In the absence of agreement between the disputing parties, the tribunal shall determine that place in accordance with the applicable arbitration rules, provided that the place is in the territory of a State which is a party to the New York Convention.

2. A non-disputing Party may submit oral or written submissions to the court with respect to the interpretation of this Agreement.

3. The court shall be empowered to accept and consider amicus curiae communications that come from a person or entity that is not a disputing party.

4. Without prejudice to the power of the court to hear other objections as preliminary questions, a court shall hear and decide as a preliminary question any objection of the respondent that, as a matter of law, the complaint submitted is not a claim in respect of which To issue an award favorable to the claimant in accordance with Article 3.27.

a) Such objection shall be submitted to the court as soon as possible after the constitution of the court, and in no case later than the date fixed by the court for the defendant to present his answer to the application (or in the case of a Modification of the notice of arbitration, the date set by the court for the respondent to submit its response to the amendment).

b) Upon receiving an objection under this paragraph, the court shall suspend any action on the merits of the litigation, establish a timetable for the consideration of the objection that will be compatible with any schedule that has been established for the consideration of Any other preliminary question, and shall issue a decision or award on the objection, setting out the grounds of the objection.

c) In adjudicating on an objection under this paragraph, the court shall assume as factual the allegations of fact presented by the claimant for the purpose of supporting any claim appearing in the notice of arbitration (or any amendment thereto) In disputes submitted in accordance with the UNCITRAL Arbitration Rules, the statement of claim referred to in Article 18 of the UNCITRAL Arbitration Rules. The court may also consider any other relevant facts that are not controversial.

d) The defendant does not waive any objection in respect of jurisdiction or any substantive argument, simply because it has made an objection under this paragraph or makes use of the expedited procedure established in paragraph 5.

5. In the event that the defendant so requests, within forty-five (45) days following the constitution of the court, the court shall decide, expeditiously, on an objection in accordance with paragraph 4 and any Another objection in the sense that the dispute is not within the jurisdiction of the court. The court shall suspend any action on the merits of the litigation and shall issue, not later than one hundred and fifty (150) days after the date of the request, a decision or award on said objection, stating the basis thereof. However, if a disputing party requests a hearing, the court may take thirty (30) additional days to issue the decision or award. Regardless of whether a hearing has been requested, the court may, by demonstrating an extraordinary reason, delay the issuance of its decision or award for a short additional period, which may not exceed thirty (30) days.

6. When the court decides on a respondent's objection in accordance with paragraphs 4 or 5, it may, if warranted, grant the winning disputing party reasonable costs and attorneys' fees incurred in filing the objection or To oppose it. In determining whether such award is warranted, the court shall consider whether the claimant's claim or the respondent's objection were frivolous, and shall afford the disputing parties reasonable opportunity to submit their comments.

7. The defendant shall not oppose as a defense, counterclaim or countervailing duty or for any other reason that, under an insurance or guarantee contract, the claimant has received or will receive compensation or other compensation for all or part of the alleged damages.

8. The court may order an interim measure of protection to preserve the rights of a disputing party, or for the purpose of ensuring the full exercise of the court's jurisdiction, including an order to preserve evidence in or Control of a disputing party or to protect the jurisdiction of the court. The court may not order the attachment or prevent the application of a measure that is considered a violation referred to in Article 3.17. For purposes of this paragraph, an order includes a recommendation.

9. a) In any arbitration under this Section, at the request of any of the disputing parties, the tribunal shall, prior to rendering a decision or award of liability, communicate its proposed decision or award to the disputing parties and the Parties Not contenders. Within sixty (60) days after such proposed decision or award is communicated, the disputing parties may submit written comments to the court regarding any aspect of their proposed decision or award. The court shall consider such comments and render its decision or award no later than forty-five (45) days after the expiration of the sixty (60) day deadline for comment.

b) Subparagraph (a) shall not apply to any arbitration conducted pursuant to this Section in which an appeal is available under paragraph 10.

10. If a separate multilateral treaty establishing an appellate body enters into force for the purpose of reviewing awards rendered by tribunals constituted under international trade or investment agreements to deal with investment disputes, the Parties shall seek To reach an agreement that would cause such appellate body to review awards rendered pursuant to Article 3.27 of this Section in arbitrations that have begun after the multilateral agreement enters into force between the Parties.

### **3.22. Transparency of Arbitration Proceedings**

1. Subject to paragraphs 2 and 4, the respondent, after receiving the following documents, shall promptly deliver them to the non-disputing Parties and make them available to the public:

- a) notification of intent;
- b) the notice of arbitration;
- c) the allegations, briefs and explanatory notes submitted to the court by a disputing party and any written submissions submitted in accordance with Articles 3.21.2 and 3.21.3 and Article 3.26;
- d) the minutes or transcripts of the court hearings, when available; and
- e) orders, awards and decisions of the court.

2. The tribunal shall conduct open hearings to the public and shall determine, in consultation with the disputing parties, the relevant logistical arrangements. However, any disputing party seeking to use information classified as protected information at a hearing must so inform the court. The court will make appropriate arrangements to protect the information from its disclosure.

3. Nothing in this Section requires the respondent to make available protected information or to provide or allow access to information that he may retain pursuant to Article 8.03 (National Security) or Article 8.05 (Exceptions to Disclosure of information).

4. Any protected information submitted to the court shall be protected from disclosure in accordance with the following procedures:

- a) Subject to sub-paragraph (d), neither the disputing parties nor the court shall disclose to any non-disputing Party or to the public any protected information where the disputing party providing the information clearly so designates it in accordance with sub-paragraph (b);
- b) Any disputing party claiming that certain information constitutes protected information shall clearly designate it at the time of its submission to the court;
- c) A disputing party shall, at the same time as submitting a document containing information alleged to be protected information, submit a redacted version of the document that does not contain the information. Only the drafted version shall be provided to the non-disputing Parties and shall be made public in accordance with paragraph 1; and
- d) The court shall rule on any objection in relation to the designation of information alleged as protected information. If the court determines that such information was not properly designated, the disputing party submitting the information may: (i) withdraw all or part of the submission containing such information, or (ii) agree to re-submit full and redacted documents with corrected designations in accordance with the court's determination and subparagraph (c). In all cases, the other disputing party shall, when necessary, resubmit complete and redacted documents, which omit the information withdrawn in accordance with (i) by the disputing party who first submitted the information or who re-designate the information on a consistent basis with the designation made in accordance with (ii) of the disputing party that first submitted the information.

5. Nothing in this Section requires the respondent to deny the public access to information that, according to its law, must be disclosed.

### **3.23. Applicable Law**

1. Subject to paragraph 2, a tribunal established under this Section shall decide the disputes that are submitted for its consideration in accordance with this Treaty and with the applicable provisions of international law and, where applicable, the law of the defendant.

2. A decision of the Council declaring the interpretation of a provision of this Agreement, pursuant to Article 9.02 (Functions of the Council), shall be binding upon a court established pursuant to this Section, and any decision or award rendered by the court shall be compatible with that decision.

### **3.24. Interpretation of Annexes**

1. Where the defendant submits as a defense that the measure alleged to be in breach is within the scope of Annex I (Non-

Conforming Measures) or Annex II (Measures to the Future), at the request of the defendant, the court shall request the Council An interpretation on the subject. Within sixty (60) days of delivery of the request, the Council shall submit to the court in writing any decision declaring its interpretation, in accordance with Article 9.02 (Functions of the Council).

2. The decision issued by the Council under paragraph 1 shall be binding on the court and any decision or award rendered by the court shall be consistent with that decision. If the Board does not issue such a decision within a period of sixty (60) days, the court shall decide on the matter.

### **3.25. Expert Reports**

Without prejudice to the designation of other experts when authorized by the applicable arbitration rules, the tribunal, at the request of a disputing party or on its own initiative unless the disputing parties do not accept it, may designate one or more experts to inform In writing, any question of fact relating to environmental, health, safety or other scientific matters raised by a disputing party in a proceeding, in accordance with such terms and conditions as the disputing parties agree.

### **3.26. Accumulation of Procedures**

1. In cases where two or more separate claims under Article 3.17.1 have been submitted to arbitration and the claims contain a common issue of fact or law and arise from the same facts or circumstances, any disputing party may Seek an order of accumulation in accordance with the agreement of all disputing parties in respect of which the order of accumulation is sought or in accordance with the terms of paragraphs 2 to 10.

2. The disputing party seeking an accumulation order in accordance with this Article shall deliver a written request to the Secretary-General and all disputing parties in respect of which the accumulation order is sought and shall specify in the request following:

- a) the name and address of all the disputing parties in respect of which the order of accumulation is sought;
- b) the nature of the order of accumulation requested; and
- c) the basis on which the application is supported.

3. Unless the Secretary-General determines, within thirty (30) days after receipt of a request pursuant to paragraph 2, that the request is manifestly unfounded, a tribunal shall be established under this Article.

4. Unless all the disputing parties in respect of which the order of accumulation is sought agree otherwise, the tribunal established in accordance with this Article shall be composed of three (3) arbitrators:

- a) an arbitrator appointed by agreement of the plaintiffs;
- b) an arbitrator appointed by the defendant; and
- c) the presiding arbitrator appointed by the Secretary-General, who shall not be a national of either Party.

5. If, within a period of sixty (60) days following the receipt by the Secretary-General of the request made pursuant to paragraph 2, the respondent or the complainants do not appoint an arbitrator under paragraph 4, the Secretary General, at the request of any disputing party in respect of which the accumulation order is sought, shall appoint the arbitrator or arbitrators who have not yet been appointed. If the respondent fails to appoint an arbitrator, the Secretary-General shall designate a national of the disputing Party and, in the event that the claimants do not designate an arbitrator, the Secretary-General shall designate a national of a Party of the claimants.

6. In the event that the tribunal established pursuant to this Article has established that two or more claims under Article 3.17.1 have arisen to arbitration, that they raise a common issue of fact or law, and arise from them Facts or circumstances, the court may, in order to reach a fair and efficient resolution of the claims and after hearing the disputing parties, in order:

- a) assume jurisdiction and jointly determine and determine all or part of the claims;
- b) assume jurisdiction and know and determine one or more claims, the determination of which it considers would contribute to the resolution of the others; or
- c) instruct a court previously established under Article 3.20 to assume jurisdiction and to know and jointly determine, on all or part of the claims, provided that:
  - (i) that court, at the request of any plaintiff who has not previously been a disputing party before that court, is reintegrated



with its

Original members, except that the arbitrator by the plaintiffs shall be appointed in accordance with paragraphs 4 (a) and 5; and

(ii) that court decides whether to repeat any prior hearing.

7. In the case where a court has been established under this Article, a claimant who has submitted a claim to arbitration under Article 3.17.1, and whose name is not mentioned in a request under paragraph 2, may make A written request to the court to the effect that such claimant is included in any order made under paragraph 6, and shall specify in the request:

- a) the name and address of the claimant;
- b) the nature of the order of accumulation requested; and
- c) the grounds on which the application is based.

The complainant shall deliver a copy of his application to the Secretary-General.

8. A tribunal established pursuant to this Article shall conduct the proceedings in accordance with the provisions of the UNCITRAL Arbitration Rules, except as modified by this Section.

9. A tribunal established under Article 3.20 shall not have jurisdiction to settle a claim, or part thereof, in respect of which a court established or instructed in accordance with this Article has assumed jurisdiction.

10. At the request of a disputing party, a tribunal established under this Article may, pending its decision under paragraph 6, order that proceedings of a tribunal established under Article 3.20 be deferred, unless the latter Court has already suspended its proceedings.

### **3.27. Reports**

1. Where a court makes a final award that is unfavorable to the defendant, the court may award, separately or in combination, only:

- a) pecuniary damages and interest thereon;
- b) restitution of property, in which case the award will provide that the defendant can pay pecuniary damages, plus interest that comes instead of restitution.

A court may also award costs and attorney's fees in accordance with this Section and with applicable arbitration rules.

2. Subject to paragraph 1, where a claim under Article 3.17.1 (b) is submitted to arbitration:

- a) the award providing for the return of the property shall provide that the restitution be granted to the enterprise;
- b) the award that grants pecuniary damages and interests that proceeds will provide that the sum of money is paid to the company; and
- c) the award will provide that it is issued without prejudice to any right that any person has on the repair under the applicable domestic law.

3. A court is not authorized to order the payment of punitive damages.

4. The award rendered by a court shall be binding only on the disputing parties and only on the specific case.

5. Subject to paragraph 6 and the review procedure applicable to a provisional award, the disputing party shall abide by and comply with the award without delay.

6. A disputing party may not request execution of the final award until:

- a) in the case of a final award rendered in accordance with the ICSID Convention:
  - (i) one hundred and twenty (120) days have elapsed from the date on which the award was rendered and no disputing party has requested revision or annulment thereof; or
  - (ii) have completed the review or annulment procedures; and

(b) in the case of a final award rendered in accordance with the ICSID Additional Facility Rules or the UNCITRAL Arbitration Rules;

(i) ninety (90) days have elapsed since the date on which the award was rendered and no disputing party has initiated a procedure to review, revoke or annul it; or

(ii) a court has dismissed or admitted a request for review, revocation or annulment of the award and this decision can not be appealed.

7. Each Party shall provide for the due enforcement of an award in its territory.

8. Where the defendant breaches or fails to comply with a final award, upon the lodging of an application by the Claimant's Party, the establishment of an arbitral tribunal shall be requested in accordance with the dispute settlement mechanism in force between the Parties.

The requesting Party may invoke such procedures for a determination to the effect that failure to comply or disregard the terms of the final award is contrary to the obligations of this Agreement.

9. A disputing party may resort to the enforcement of an arbitral award in accordance with the ICSID Convention, the New York Convention or the Inter-American Convention, regardless of whether the mechanism contemplated in paragraph 8 has been applied.

10. For the purposes of Article I of the New York Convention and Article I of the Inter-American Convention, the claim submitted to arbitration under this Section shall be deemed to arise from a trade relationship or operation.

### **3.28. Delivery of Documents**

The delivery of the notification and other documents to a Party shall be made at the place designated by it in Annex 3.28.

### **Annex 3.11.**

1. For purposes of Article 3.11.1 a) are understood to fall within the term of public purpose:

a) for the case of Costa Rica: public utility or public interest;

b) in the case of El Salvador: public utility or social interest;

c) in the case of Guatemala: collective utility, social benefit or public interest;

d) in the case of Honduras: need or public interest; and

e) in the case of Nicaragua: public utility or social interest.

2. The term public purpose refers to a concept of customary international law

3. For the purposes of Article 3.11, the Parties confirm their common understanding that:

a) Article 3.11.1 attempts to reflect customary international law concerning the obligation of States with respect to expropriation.

b) An act or series of acts of a Party may not constitute an expropriation unless it interferes with a tangible or intangible property right or with the essential attributes or faculties of the domain of an investment.

c) Article 3.11.1 addresses two situations. The first is direct expropriation, where an investment is nationalized or otherwise expropriated directly through the formal transfer of the title or the right of dominion.

d) The second situation addressed by Article 3.11.1 is indirect expropriation, where an act or a series of acts of a Party have an equivalent effect to a direct expropriation without the formal transfer of the title or the right of dominion.

(i) Whether or not an act or series of acts of a Party, in a specific situation, constitutes an indirect expropriation, requires a factual investigation, on a case-by-case basis, to consider inter alia:

(1) the economic impact of the governmental act, although the fact that an act or series of acts of a Party has an adverse effect on the economic value of an investment does not, on its own, provide that an indirect expropriation has occurred;

2) the extent to which government action interferes with unequivocal and reasonable investment expectations; and

3) the nature of government action.

(ii) Except in exceptional circumstances, non-discriminatory regulatory acts of a Party which are designed and applied to protect legitimate public welfare objectives, such as public health, safety and the environment, do not constitute indirect expropriations.

### **Annex 3.28.**

1. For purposes of Article 3.28, the place for delivery of notifications and other documents under Section B will be:

- a) in the case of Costa Rica, the General Directorate of Foreign Trade, Ministry of Foreign Trade, Avenues 1 and 3, Calle 40, San José, Costa Rica;
- b) in the case of El Salvador, the Department of Administration of Commercial Treaties, Ministry of Economy, Alameda Juan Pablo II and Calle Guadalupe, Master Plan, Edificio "C-2", San Salvador, El Salvador;
- c) in the case of Guatemala, the Directorate of Foreign Trade Administration, Ministry of Economy, 8 a 10-43 zone 1, Guatemala, Guatemala;
- d) in the case of Honduras, the General Directorate of Economic Integration and Trade Policy, Secretary of State in the Offices of Industry and Commerce, Boulevard José Cecilio del Valle, San José Building, former Fenaduanah building, Tegucigalpa, Honduras;
- e) in the case of Nicaragua, the Directorate General of Foreign Trade, Ministry of Industry and Commerce Development, Km. 6, Carretera a Masaya, Managua, Nicaragua;

Or their successors.

2. For the modification of the information contained in the previous paragraph, it will suffice the notification of the Party concerned to the Depositary, who shall notify the other Parties.

## **Chapter 4. Cross-border Trade In Services**

### **4.01. Definitions**

For the purposes of this Chapter, the following definitions shall apply:

Cross-border trade in services: the provision of a service:

- a) from the territory of one Party to the territory of another Party;
- b) in the territory of a Party, by a person of that Party, to a person of another Party; or
- c) by a national of a Party in the territory of another Party;

Enterprise: an "enterprise", as defined in Article 2.01 (Definitions of general application), and the branch of an enterprise;

Service provider: any person intending to provide or provide a service;

Service provider of another Party: a person from another Party who intends to provide or provide a service;

Service provided in the exercise of governmental authority: any service which is not provided on a commercial basis or in competition with one or more service providers;

Specialized air services: any non-transport air service, such as fire suppression, spraying, panoramic flights, aerial surveying, aerial mapping, aerial photography, skydiving service, towing of gliders, air transport services for log transport and Construction and other air services linked to agriculture, industry and inspection;

Professional services: the services, which require specialized higher education or equivalent training or experience, and whose exercise is authorized or restricted by a Party, but does not include services rendered by persons practicing a trade or to crew members of merchant ships and aircraft.

### **4.02. Scope of Application**

1. This Chapter applies to measures that a Party adopts or maintains on cross-border trade in services by service providers of another Party, including those relating to:

- a) the production, distribution, marketing, sale and provision of a service;
- b) the purchase or use of, or payment for, a service;
- c) access to, and use of:
  - (i) distribution and transportation systems related to the provision of a service; and
  - (ii) telecommunications networks and services;
- d) the presence in its territory of a cross-border service provider of another Party; and
- e) the granting of a bond or other form of financial guarantee, as a condition for the provision of a service.

2. This Chapter does not apply to:

- a) air services, including national and international air transport, with and without fixed itinerary, and auxiliary activities in support of air services, except:
  - (i) aircraft repair and maintenance services during the period of withdrawal of a service aircraft;
  - (ii) specialized air services; and
  - (iii) computerized reservation systems;
- b) financial services;
- c) subsidies or grants awarded by a Party or a State enterprise, including government-supported loans, guarantees and insurance;
- d) services provided in the exercise of governmental powers such as, and not limited to, enforcement, social rehabilitation services, security or income insurance, social security or welfare, social welfare, Public education, public training, health and care for children; neither
- e) public procurement.

3. This Chapter does not impose any obligation on a Party in respect of a national of another Party who intends to enter its labor market or who has permanent employment in its territory, or to confer any right to that national, with respect to such access or employment.

4. For the purposes of this Chapter, "measures that a Party adopts or maintains" means measures adopted or maintained by:

- a) central and local governments; and
- b) non-governmental institutions in the exercise of powers delegated to them in accordance with national legislation, by central and local governments.

#### **4.03. Most-favoured Nation Treatment**

1. Each Party shall accord to providers of services of another Party treatment no less favorable than that it grants in like circumstances to service providers of any other Party or non-Party.

2. Nothing in this Chapter shall be construed to prevent a Party from conferring advantages on adjacent countries in order to facilitate exchanges, limited to contiguous border areas, of services that are produced or consumed locally.

#### **4.04. National Treatment**

Each Party shall accord to service providers of another Party treatment no less favorable than that it grants, in like circumstances, to its own service providers.

#### **4.05. Local Presence**

Neither Party shall require a service provider of another Party to establish or maintain a representative office or other type of business or to reside in its territory as a condition for the cross-border provision of a service.

#### **4.06. Market Access**

No Party shall adopt or maintain measures which:

a) impose limitations on:

(i) the number of service providers, whether in the form of numerical quotas, monopolies or exclusive service providers or by requiring an economic needs test,

(ii) the total value of the service assets or transactions in the form of numerical quotas or the requirement of an economic needs test,

(iii) the total number of service operations or the total amount of service production, expressed in designated numerical units, in the form of quotas or by requiring an economic needs test; (6)

(iv) the total number of natural persons that may be employed in a particular service sector or which a service provider may employ and which are necessary for the provision of a specific service and are directly relating to it, in the form of numerical quotas or by requiring an economic needs test; or

b) restrict or prescribe specific types of legal person or joint venture by means of which a service provider may provide a service.

(6) This clause does not cover measures by a Party that limit inputs to the provision of services.

#### **4.07. Reservations and Exceptions**

1. Articles 4.03, 4.04, 4.05 and 4.06 do not apply to:

a) any existing non-conforming measure maintained by a Party in:

(i) central level government, as established by that Party in its Schedule to Annex I (Non-Conforming Measures), or

(ii) a local level government;

(b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or

(c) an amendment to any non-conforming measure referred to in subparagraph (a) provided that such amendment does not diminish the conformity of the measure, as it was in force immediately before the amendment, with Articles 4.03, 4.04, 4.05 and 4.06.

2. Articles 4.03, 4.04, 4.05, 4.06 do not apply to any measure that a Party adopts or maintains in relation to sectors, subsectors or activities, as indicated in its Schedule to Annex II (Measures to the Future).

#### **4.08. Transparency In the Development and Application of Regulations**

In addition to Chapter Ten (Transparency):

a) Each Party shall establish or maintain adequate mechanisms to respond to consultations of interested persons regarding its regulations relating to the subject matter of this Chapter;

b) when adopting definitive regulations concerning the subject matter of this Chapter, each Party shall respond in writing, as far as possible, even on request, to substantive comments received from interested persons with respect to the proposed regulations; and

c) to the extent possible, each Party shall give a reasonable period between the publication of definitive regulations and the date on which they enter into force.

#### **4.09. Future Liberalization**

With a view to achieving a progressively higher level of liberalization and prior Council instruction, the Parties undertake to conduct future negotiations aimed at eliminating the remaining non-conforming measures listed under Article 4.07.1.

#### **4.10. Committee on Investment and Cross-Border Trade In Services**

1. The Committee on Investment and Cross-Border Trade in Services, the composition of which is set out in Annex 4.10.
2. Without prejudice to Article 9.04 (Functions of Committees), the Committee shall have, inter alia, the following functions:
  - a) facilitate the exchange of information between the Parties, as well as technical cooperation in trade in services and investment; and
  - b) to consider issues of interest to Parties related to trade in services and investment that are discussed in international forums.

#### **4.11. National Regulations**

1. When a Party requires authorization for the provision of a service, the competent authorities of a Party, within a reasonable time after the submission of an application that is considered complete in accordance with its laws and regulations, shall inform the applicant of the decision Concerning your request. At the request of that applicant, the competent authorities of the Party shall, without undue delay, provide information concerning the status of the request. This obligation shall not apply to the authorization requirements that fall within the scope of Article 4.07.2.
2. In order to ensure that measures relating to requirements and procedures in respect of qualifications, technical standards and licensing requirements do not constitute unnecessary obstacles to trade in services, each Party shall endeavor to ensure, as appropriate for each Sector that any of the measures it adopts or maintains:
  - a) are based on objective and transparent criteria, such as competence and ability to provide the service;
  - b) are not more burdensome than necessary to ensure the quality of the service; and
  - c) in the case of licensing procedures, do not in themselves constitute a restriction on the provision of the service.
3. If the results of negotiations related to Article VI: 4 of the GATS (or the outcome of any similar negotiation, developed in another multilateral forum in which the Parties participate) enter into force for each Party, this Article shall be modified, As the case may be, after consultations are held between the Parties to ensure that those results are effective under this Agreement. The Parties shall coordinate, as appropriate, in such negotiations.

#### **4.12. Mutual Recognition**

1. For the purposes of compliance, in whole or in part, with its rules or criteria for the authorization or certification of service providers or the granting of licenses and subject to the requirements of paragraph 4, a Party may recognize the education or experience gained, requirements met or licenses or certificates issued in a particular country, including another Party or a non-Party. Such recognition, which may be effected by harmonization or otherwise, may be based on an agreement or agreement with the country concerned or may be granted autonomously.
2. Where a Party recognizes, autonomously or through an agreement or agreement, the education or experience gained, requirements met or licenses or certificates issued in the territory of another Party or a non-Party, Article 4.03 shall be interpreted as requiring the Party to accord such recognition to education or experience gained, requirements met or licenses or certificates issued in the territory of any other Party.
3. A Party which is party to an agreement or arrangement of the kind referred to in paragraph 1, existing or future, shall provide adequate opportunities to another Party, if that other Party is interested, to negotiate its adherence to such agreement or agreement Or to negotiate with her a comparable one. Where a Party grants recognition autonomously, it shall provide appropriate opportunities to another Party to demonstrate that the education, experience, licenses or certificates obtained or requirements met in the territory of that other Party should be recognized.
4. No Party shall accord recognition in a manner that discriminates between countries in the application of its standards or criteria for the authorization or certification of service providers or the licensing of services or a disguised restriction on the trade of services.

#### **4.13. Transfer and Payments**

1. Each Party shall allow all transfers and payments related to the cross-border provision of services to be made freely and without delay to and from its territory.
2. Each Party shall permit these transfers and payments related to the cross-border provision of services to be made in a freely usable currency at the exchange rate prevailing in the market at the time of transfer.
3. Notwithstanding paragraphs 1 and 2, a Party may prevent the making of a transfer or payment through the equitable, non-discriminatory and good faith application of its laws relating to:
  - a) bankruptcy, insolvency or protection of the rights of creditors;
  - b) issuance, trading or operations of securities, futures, options or derivatives;
  - c) financial reporting or record keeping of transfers where necessary to collaborate with law enforcement or financial regulatory authorities;
  - d) criminal offenses; or
  - e) guarantee of compliance with orders or rulings in judicial or administrative proceedings.

#### **4.14. Denial of Benefits**

A Party may deny benefits under this Chapter to a service provider of another Party, upon notification and consultation, where the Party determines that the service is being provided by a service provider who does not conduct substantive business operations in the territory of Other Party and which, under the law of that Party, is owned or controlled by persons from a non-Party.

#### **4.15. Professional Services**

Annex 4.15 applies to measures adopted or maintained by a Party relating to the licensing or certification of professional service suppliers, as set out in that Annex.

#### **4.16. Ground Transportation Services**

On the instructions of the Council, the Parties may develop a work program for the purpose of improving land transport flows between their territories.

#### **4.17. Technical Cooperation**

The Parties shall cooperate with each other to establish a system to provide service providers with information on their markets with regard to:

- a) the commercial and technical aspects of the provision of services;
- b) the possibility of obtaining technology in services; and
- c) all those aspects that the Council identifies in terms of services.

#### **Annex 4.10. Committee on Investment and Cross-Border Trade in Services**

For the purposes of Article 4.10, the Committee on Investment and Cross-Border Trade in Services, is composed as follows:

- a) for the case of Costa Rica by representatives of the General Directorate of Foreign Trade of the Ministry of Foreign Trade;
- b) in the case of El Salvador, by representatives of the Department of Administration of Commercial Treaties of the Ministry of Economy;
- c) in the case of Guatemala by representatives of the Directorate of Foreign Trade Administration of the Ministry of Economy;
- d) for the case of Honduras by representatives of the General Directorate of Economic Integration and Commercial Policy of the Secretariat of State in the Offices of Industry and Commerce;

e) in the case of Nicaragua by representatives of the General Directorate of Foreign Trade of the Ministry of Development, Industry and Commerce;

Or their successors.

## **Annex 4.15. Professional Services**

### **Elaboration of Professional Standards**

1. The Parties shall encourage relevant bodies in their respective territories to develop mutually acceptable standards and criteria for the issuance of licenses and certificates to professional service providers and to submit recommendations to the Council on their mutual recognition.

2. The standards and criteria referred to in paragraph 1 may be elaborated in relation to the following aspects:

A) education - accreditation of schools or academic programs;

(B) examinations - qualification examinations for obtaining licenses, including alternative methods of assessment, such as oral examinations and interviews;

(C) experience - duration and nature of the experience required to obtain a license;

(D) conduct and ethics - standards of professional conduct and the nature of disciplinary measures in the event of professional service providers contravening them;

(E) professional development and renewal of certification - continuing education and the corresponding requirements for retaining the professional certificate;

F) scope of action - scope or limits of authorized activities;

G) local knowledge - requirements on knowledge of aspects such as local laws, regulations, language, geography or climate;

Y

H) consumer protection - alternative to residency requirements, such as a bond, professional liability insurance and customer reimbursement funds to ensure consumer protection.

3. Upon receipt of a recommendation referred to in paragraph 1, the Council shall review it within a reasonable period of time to decide whether it is consistent with the provisions of this Agreement. Based on the review by the Council, each Party shall encourage its respective competent authorities to implement this recommendation, where appropriate, within a mutually agreed time frame.

### **Temporary Licenses**

4. Each Party shall, where the Parties so agree, encourage the relevant agencies of their respective territories to develop procedures for the temporary licensing of professional service providers of another Party.

### **Review**

5. The Council shall review the implementation of this Annex at least once every three (3) years.

## **Chapter 5. Telecommunications (7)**

### **5.01. Definitions**

For the purposes of this Chapter, the following definitions shall apply:

Cost-based: means cost-based, and may include reasonable profit, and may involve different costing methodologies for different facilities or services;

Leased circuits: telecommunication facilities between two or more designated points that are set aside for dedicated use or availability for a particular customer or for other users chosen by that customer;

Physical co-location: physical access to and control over space in order to install, maintain or repair equipment, in facilities owned or controlled and used by a supplier providing public telecommunications services;



Network element: an installation or equipment used in the provision of a public telecommunications service, including features, functions, and capabilities that are provided through such facilities or equipment;

Enterprise: an "enterprise" as defined in Article 2.01 (Definitions of general application) and includes a branch of a company;

Essential installations: facilities of a network or public telecommunications service which:

Are exclusively or predominantly supplied by a single or a limited number of suppliers; and

It is not economically or technically feasible to replace them for the purpose of providing a service;

Interconnection: liaison with providers of public telecommunications services in order to enable users of one provider to communicate with users of other providers and to access services provided by another provider;

Non-discriminatory treatment: treatment no less favorable than that accorded, in similar circumstances, to any other user of a similar public telecommunications service;

Reference interconnection offer: an interconnection offer extended by a major supplier and registered with, or approved by, a telecommunications regulatory body that is sufficiently detailed to enable public telecommunications service providers wishing to accept their rates, terms and conditions, obtain the interconnection without having to engage in negotiations with the relevant supplier in question;

Regulatory agency for telecommunications: a national body responsible for telecommunications regulation;

Dialing parity: the ability of an end-user to use the same number of digits to access a similar public telecommunications service, regardless of the provider of the public telecommunications service chosen by the end user;

Number portability: the ability of end-users of public telecommunications services to maintain, on the same site, telephone numbers without impairing quality, reliability, or convenience when switching between similar providers of public telecommunications services;

Important supplier: a public telecommunications service provider that has the ability to materially affect (taking into consideration prices and offer) the terms of participation in the relevant market of public telecommunications services, as a result of:

Controlling essential facilities; or

Make use of its position in the market;

Mobile commercial services: public telecommunications services supplied through wireless mobile media;

Information service: providing an ability to generate, acquire, store, transform, process, retrieve, use or make available information through telecommunications, and includes electronic advertising, but does not include any use of any of these capabilities for the administration, control or operation of a telecommunications system or the administration of a telecommunications service;

Public telecommunications service means any telecommunications service that a Party requires, whether in an explicit or de facto manner, to be offered to the general public. These services may include, inter alia, telephony and data transmission typically related to information provided by the customer between two or more points without any end-to-end change in the form or content of the customer's information, but does not include information services;

Telecommunications: the transmission and reception of signals by any electromagnetic means, including photonic means;

User: an end user or a provider of public telecommunications services; and

End-user: an end consumer or subscriber to a public telecommunications service, including a service provider other than the public telecommunications service provider.

(7) Instead of the obligations established in this Chapter, Costa Rica will assume the specific commitments set out in Annex 5.

## 5.02. Scope of Application

1. This Chapter applies to:

Measures adopted or maintained by a Party related to access to and use of public telecommunications services;

Measures taken or maintained by a Party related to the obligations of providers of public telecommunications services;

Other measures relating to public telecommunications networks or services; and

Measures taken or maintained by a Party related to the provision of information services.

2. Except to ensure that undertakings operating broadcasting stations and cable systems have access to and continuous use of public telecommunications services, this Chapter does not apply to any measure that a Party adopts or maintains in relation to broadcasting or broadcasting. Distribution by cable of radio or television programming.

3. Nothing in this Chapter shall be construed as:

Oblige a Party or compel a Party to require any undertaking to establish, construct, acquire, lease, operate or supply telecommunications networks or services, where such networks or services are not offered to the general public;

Prevent a Party from prohibiting persons operating private networks from using their networks to provide public telecommunications networks or services to third parties; or

Oblige a Party to require any undertaking exclusively engaged in broadcasting or cable distribution of radio or television programming to make available its facilities for broadcasting or cable distribution as a public telecommunications network.

### **5.03. Access to and Use of Public Telecommunications Services**

1. Each Party shall ensure that enterprises of the other Party have access to, and can make use of, any public telecommunications service offered on its territory or in a cross-border manner, including leased circuits, on reasonable and non-discriminatory terms and conditions, including Specified in paragraphs 2 to 6.

2. Each Party shall ensure that such undertakings are allowed:

Purchase or lease and connect a terminal or other equipment that interfaces with a public telecommunications network;

Providing services to individual or multiple end users, through own or leased circuits;

Connect own or leased circuits with public telecommunications networks and services in the territory or through the borders of that Party or with circuits leased or owned by another person;

Perform functions of switching, signaling, processing and conversion of functions; Y

Use operating protocols of your choice.

3. Each Party shall ensure that enterprises of the other Party are able to use public telecommunications services to transmit information in their territory or across their borders and to access information contained in databases or stored in a form that is readable by a machine In the territory of either Party.

4. Notwithstanding paragraph 3, a Party may take such measures as may be necessary to:

Ensuring the security and confidentiality of messages; or

Protect the privacy of non-public personal data of subscribers of public telecommunications services,

Subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination or any disguised restriction on trade in services.

5. Each Party shall ensure that conditions shall not be imposed on access to and use of public telecommunications networks or services other than those necessary to:

Safeguard the public service responsibilities of providers of public telecommunications networks or services, in particular their ability to make their networks or services available to the general public; or

Protect the technical integrity of public telecommunication networks or services.

6. Provided that the conditions for access to and use of public telecommunications networks or services comply with the criteria set out in paragraph 5, such conditions may include:

Requirements to use specific technical interfaces, including interface protocols, for interconnection with such networks or

services; and

Procedures for granting licenses, permits, registrations or notifications which, if adopted or maintained, are transparent and that applications submitted are processed in accordance with the national laws and regulations of each Party.

#### **5.04. Obligations Related to Providers of Public Telecommunications Services (8)**

##### Interconnection

(a) Each Party shall ensure that suppliers of public telecommunications services in its territory supply, directly or indirectly, interconnection to suppliers of public telecommunications services of another Party.

(b) In compliance with subparagraph (a), each Party shall ensure that suppliers of public telecommunications services in its territory take reasonable steps to protect the confidentiality of commercially sensitive information of, or relating to, suppliers and end-users of public telecommunications services, and only use such information to supply those services.

(c) Each Party shall provide to its telecommunications regulatory body the authority to require public telecommunications suppliers to register their interconnection contracts.

##### Resale

2. Each Party shall ensure that suppliers of public telecommunications services shall not impose discriminatory or unreasonable conditions or limitations on the resale of such services.

##### Number Portability

3. Each Party shall ensure that suppliers of public telecommunications services in its territory provide number portability, to the extent technically feasible, in a timely manner, and on reasonable terms and conditions. (9)

##### Dial parity

4. Each Party shall ensure that public service providers of telecommunications services in their territory provide dial-up parity to providers of public telecommunications services of another Party and to provide to public telecommunications service providers of another Party access to telephone numbers and related services without unreasonable dialing delays.

(8) This Article is subject to Annex 5.04. Paragraphs 2 to 4 of this Article do not apply with respect to commercial mobile service providers. Nothing in this Article shall be construed to prevent a Party from imposing the requirements set forth in this Article on commercial mobile service providers.

(9) In compliance with this paragraph, the Parties may take into consideration the economic feasibility of granting number portability.

#### **5.05. Additional Obligations Concerning Major Suppliers of Public Telecommunication Services (10)**

##### Treatment of major suppliers

1. Each Party shall ensure that major suppliers in its territory accord to providers of public telecommunications services of the other Party treatment no less favorable than that which such major suppliers grant to their subsidiaries, affiliates, or a non-affiliate service provide, with respect to:

The availability, supply, tariffs, or quality of similar public telecommunications services; and

The availability of technical interfaces required for interconnection.

##### Competitive Safeguards

2. a) Each Party shall maintain (11) appropriate measures in order to prevent

That suppliers who, by themselves or as a whole, are a major supplier in their territory, employ or continue to use anti-competitive practices.

b) Anti-competitive practices referred to in subparagraph (a) include in particular:

(i) conducting anti-competitive cross-subsidies;

(ii) use information obtained from competitors with anticompetitive results; and

(iii) not make available, in a timely manner, public telecommunications service providers, technical information on essential facilities and the commercially relevant information they need to provide public telecommunications services.

#### Resale

3. Each Party shall ensure that major suppliers in its territory:

Offer for resale, at reasonable rates, (12) to public telecommunications service providers of another Party, public telecommunications services that such major providers provide retail to end-users who are not providers of public telecommunications services; and

Do not impose discriminatory or unreasonable conditions or limitations on the resale of such services. (13)

#### Disaggregation of network elements

4. a) Each Party shall accord to its telecommunications regulatory body the power to require major suppliers in its territory to provide access to the network elements in a disaggregated manner and on terms, conditions and cost-based tariffs that are reasonable, not Discriminatory and transparent, for the provision of public telecommunications services.

b) Each Party may determine which network elements shall be available in its territory and which suppliers may obtain such elements, in accordance with its laws and regulations.

#### Interconnection

5. a) General terms and conditions

Each Party shall ensure that major suppliers in its territory provide interconnection for the facilities and equipment of the public telecommunications service providers of the other Party:

(i) at any point in the network of major suppliers that is technically feasible;

(ii) under terms, conditions (including technical standards and specifications) and non-discriminatory tariffs;

(iii) of a quality no less favorable than that provided by such major suppliers to their own similar services, or to similar services from unaffiliated service providers, or to their subsidiaries or other affiliates;

(iv) in a timely manner, on terms, conditions (including technical standards and specifications), cost-based tariffs which are transparent, reasonable, economically feasible and sufficiently disaggregated, so that suppliers do not need to pay for network components or installations which they do not require for the service they supply; and

(v) upon request, at points additional to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of the necessary additional facilities.

b) Options for interconnection with major suppliers

Each Party shall ensure that public telecommunications service providers of another Party are able to interconnect their facilities and equipment with those of major suppliers in their territory in accordance with at least one of the following options:

(i) a reference interconnection offer or other interconnection offer standard containing tariffs, terms and conditions that the major providers generally offer to public telecommunications service providers; or

(ii) the terms and conditions of a current interconnection agreement, or through the negotiation of a new interconnection agreement.

c) Public availability of interconnection offers

Each Party shall require major suppliers in its territory to make publicly available, either interconnection bids or other standard interconnection offers, which contain tariffs, terms and conditions that are generally provided by major suppliers to public telecommunications service providers.

d) Public availability of procedures for negotiation of interconnection

Each Party shall make the procedures applicable to interconnection negotiations with major suppliers in its territory available to the public.

e) Public availability of interconnection agreements with major suppliers

(i) Each Party shall require major suppliers in its territory to register all interconnection agreements to which it is a party, with its telecommunications regulatory body or other relevant agency.

(ii) Each Party shall make available to the public the existing interconnection agreements between major suppliers in its territory and any other suppliers of public telecommunications services in its territory.

Supply and pricing of leased circuit services

6. a) Each Party shall ensure that major suppliers in its territory provide to companies of the other Party, leased circuit services, which are public telecommunications services, on terms, conditions and tariffs that are reasonable and non-discriminatory.

b) In pursuance of subparagraph (a), each Party shall accord to its telecommunication regulatory bodies the power to require major suppliers in its territory to offer leased circuits which are public telecommunications services to undertakings of the other Party, Flat fee, with cost-based pricing.

Co-location

7. a) Subject to sub-paragraphs (b) and (c), each Party shall ensure that providers in its territory to supply to the public telecommunications service providers of another Party, physical co-location of equipment necessary for interconnection, on terms, conditions and rates based on costs that are reasonable, non-discriminatory and transparent.

b) Where physical co-location is not practicable for technical reasons or because of space limitations, each Party shall ensure that major suppliers in its territory:

(i) provide an alternative solution, or

(ii) facilitate virtual co-location in their territory,

On terms, conditions and rates based on costs, that are reasonable, non-discriminatory and transparent.

c) Each Party may specify in its laws and regulations which facilities are subject to subparagraphs (a) and (b).

Access to rights of way

8. Each Party shall ensure that significant suppliers in its territory grant access to its poles, pipelines, conduits, and rights of way to providers of public telecommunications services of another Party on terms, conditions and tariffs that are reasonable and non-discriminatory.

(10) This Article is subject to Annex 5.04. This Article does not apply with respect to commercial mobile service providers. This Article does not affect any rights and obligations that a Party may have under the GATS and no provision in this Article shall be construed to prevent a Party from imposing the requirements set forth in this Article on commercial mobile service providers.

(11) For the purposes of paragraph 2, "maintaining" a measure includes the implementation of such measure, as appropriate.

(12) For the purposes of subparagraph (a), wholesale tariffs, established in accordance with the laws and regulations of a Party, meet the standard of reasonableness.

(13) When a Party or its legislation so provides, a Party shall prohibit the reseller from obtaining, at wholesale rates, a public telecommunications service available at a retail level only for a limited category of users, to offer the service to a different category of users.

## 5.06. Underwater Cable Systems

Each Party shall ensure reasonable and non-discriminatory treatment for access to underwater cable systems (including platform installations) in its territory where the supplier is authorized to operate a submarine cable system as a public

telecommunications service.

## **5.07. Conditions for the Provision of Information Services**

1. No Party shall require an enterprise in its territory to classify (14) as an information service provider and to provide such services on non-proprietary facilities which:

Provide such services to the general public;

Justify their rates according to their costs;

Record fees for such services;

Interconnect your networks with any particular customer for the provision of such services; or

Is in conformity with any particular technical regulation or regulation on interconnection other than for interconnection to public telecommunications networks.

2. Notwithstanding paragraph 1, a Party may take the actions described in subparagraphs (a) through (e) to remedy a practice of an information service provider that the Party has encountered in a particular case that is anticompetitive Compliance with its laws or regulations, or to otherwise promote competition or safeguard the interests of consumers.

(14) For the purposes of applying this provision, each Party may, through its telecommunications regulatory body, classify which services in its territory are information services.

## **5.08. Independent Regulatory Bodies and Government-owned Telecommunications Providers (15)**

1. Each Party shall ensure that its telecommunications regulatory body is separated from, and will not respond to, any public telecommunications service provider. To this end, each Party shall ensure that its telecommunications regulatory body has no financial interest or maintains an operational role in that provider.

2. Each Party shall ensure that the decisions and procedures of its telecommunications regulatory body are impartial with respect to all persons concerned. To this end, each Party shall ensure that any financial interest it has in a public telecommunications service provider does not influence the decisions and procedures of its telecommunications regulatory body.

3. No Party shall accord to a provider of public telecommunications services or an information service provider more favorable treatment than that accorded to a similar supplier of another Party on the ground that the provider receiving more favorable treatment is owned, in whole or in part, of the Party's national government.

(15) Each Party shall ensure that its telecommunications regulatory body has adequate resources to carry out its functions.

## **5.09. Universal Service**

Each Party shall administer any universal service obligation it maintains in a transparent, non-discriminatory, and competitively neutral manner and shall ensure that the universal service obligation is no more burdensome than is necessary for the type of universal service that has been defined.

## **5.10. Licenses and other Authorizations**

1. Where a Party requires a public telecommunications service provider to have a license, concession, permit, registration or other type of authorization, the Party shall make available to the public:

The applicable licensing or authorization criteria and procedures that it applies;

The period normally required to make a decision regarding the application for a license, concession, permit, registration or other type of authorization; and

The terms and conditions of all the licenses or authorizations that it has issued.

2. Each Party shall ensure that, upon request, an applicant receives the reasons for refusing a license, concession, permit, registration or other type of authorization.

## **5.11. Allocation and Use of Scarce Resources**

1. Each Party shall administer its procedures for the allocation and use of scarce telecommunication resources, including frequencies, numbers and easements of passage, in an objective, timely, transparent and non-discriminatory manner.

2. Each Party shall make available to the public the current status of distribution of the allocated frequency bands but shall not be obliged to provide detailed identification of frequencies allocated for specific governmental uses.

3. For greater certainty, the measures of a Party relating to the distribution and allocation of spectrum and the administration of frequencies do not per se constitute measures inconsistent with Article 4.06 (Market Access). Each Party therefore retains the right to establish and implement its policies regarding spectrum allocation and frequency management, which may limit the number of public telecommunications service providers, provided that this is done in a manner that is compatible With this Treaty. Each Party also retains the right to allocate frequency bands taking into account present and future needs.

## **5.12. Compliance**

Each Party shall accord to its competent authority the power to establish and enforce the measures of each Party relating to the obligations set forth in Articles 5.03 to 5.06. Such authority shall include the ability to impose effective sanctions, which may include financial penalties, precautionary measures (Temporarily or permanently), or the modification, suspension and revocation of licenses or other authorizations.

## **5.13. Settlement of Internal Disputes on Telecommunications**

In addition to Articles 10.06 (Administrative Procedures for the Adoption of Measures of General Application) and 10.07 (Review and Challenge), each Party shall ensure the following:

Appeal before the regulatory bodies of telecommunications

a) (i) Each Party shall ensure that enterprises of the other Party may have recourse to the telecommunications regulatory body or other relevant body to resolve disputes relating to the Party's actions relating to matters set out in Articles 5.03 to 5.06.

(ii) Each Party shall ensure that public telecommunications service providers of the other Party, which require interconnection with a major supplier in the territory of the Party, may, within a reasonable time and publicly available after the supplier requests interconnection, To the telecommunications regulatory body to resolve disputes regarding the terms, conditions and tariffs for interconnection with the major supplier.

Reconsideration

Each Party shall ensure that any enterprise that is aggrieved or whose interests are adversely affected by a determination or decision by the telecommunication regulatory body of a Party may request the agency to reconsider such determination or decision. No Party shall permit such request to be grounds for non-compliance with the determination or decision of the telecommunication regulatory body, unless a competent authority postpones such determination or decision.

Judicial review

Each Party shall ensure that any enterprise that is aggrieved or whose interests are adversely affected by a determination or decision of a telecommunications regulatory body of the Party can obtain judicial review of such determination or decision by an independent judicial authority.

## **5.14. Transparency**

In addition to Article 10.03 (Publication) and 10.04 (Provision of Information), each Party shall ensure that:

The regulations, including the basis of such regulations, of its telecommunications regulatory body, and the tariffs for end-users submitted to the telecommunications regulatory body, are published promptly or otherwise made publicly available;

Interested parties receive adequate public notice in advance and the opportunity to comment on any regulations proposed

by their telecommunications regulatory body; and

Measures relating to public telecommunications services are made available to the public, including measures relating to:

Rates and other terms and conditions of service;

Proceedings relating to legal proceedings or other contentious proceedings;

Specifications of the technical interfaces;

The bodies responsible for the development, modification and adoption of standardization measures affecting access and use;

Conditions for the connection of terminal equipment or other equipment to public telecommunications networks; and

Notification, permit, registration or license requirements, if any.

### **5.15. Flexibility In the Choice of Technologies**

Neither Party shall prevent telecommunication service providers from having the flexibility to choose the technologies they use to provide their services, including commercial wireless mobile services, subject to requirements necessary to satisfy legitimate public policy interests.

### **5.16. Abstention**

The Parties recognize the importance of relying on market forces to achieve various alternatives in the provision of telecommunications services. To this end, each Party may refrain from applying a regulation to a service which the Party classifies as a public telecommunications service if its telecommunications regulatory body determines that:

Compliance with such regulation is not necessary to prevent unjustified or discriminatory practices;

Compliance with such regulation is not necessary for the protection of consumers; and

Abstention is compatible with public interests, including the promotion and enhancement of competition among providers of public telecommunications services.

### **5.17. Relationship with other Chapters**

In the case of any incompatibility between this Chapter and another Chapter, this Chapter shall prevail to the extent of the incompatibility.

## **Chapter 6. Financial Services**

### **6.01. Definitions**

For the purposes of this Chapter, the following definitions shall apply:

Regulatory authorities: any governmental entity exercising regulatory or supervisory authority over financial service providers or financial institutions;

Public entity means a central bank or monetary authority or any institution of a public nature in the financial system of a Party which is owned or controlled by it when it is not performing commercial functions;

Financial institution means any financial intermediary or other undertaking that is authorized to provide financial services and is regulated or supervised as a financial institution under the law of the Party in whose territory it was incorporated;

Financial institution of another Party: a financial institution, incorporated in the territory of a Party owned or controlled by persons of another Party;

Investment: means "investment" as defined in Article 3.01 (Definitions), except that, with respect to "loans" and "debt instruments" referred to in that Article:

A loan granted to a financial institution or a debt instrument issued by a financial institution is an investment only when it is treated as regulatory capital by the Party in whose territory the financial institution is located; and



A loan granted by a financial institution or a debt instrument owned by a financial institution, other than a loan or debt instrument of a financial institution referred to in subparagraph (a), is not an investment;

For greater certainty, a loan from a cross-border financial service provider or a debt instrument owned by a cross-border financial service provider, other than a loan to a financial institution or a debt instrument issued by a financial institution, is an investment if such loan or debt instrument meets the criteria for investments set forth in Article 3.01 (Definitions);

Investor of a Party: as defined in Article 3.01 (Definitions);

New financial service: a financial service not provided in the territory of the Party which is provided in the territory of another Party, and includes any new form of

Provision of a financial service, or sale of a financial product that is not sold in the territory of the Party;

Self-regulatory bodies: any non-governmental entity, including any stock or futures exchange, clearing house or any other association or organization exercising an own or delegated regulatory or supervisory authority over financial institutions or providers of cross-border financial services;

Person: a "person" as defined in Article 2.01 (Definitions of general application), but does not include a branch of a business of a non-Party;

Provision of cross-border financial services or cross-border trade in financial services:

The provision of a financial service from the territory of one Party to the territory of another Party;

In the territory of a Party by a person of that Party to a person of another Party; Or by a national of a Party in the territory of another Party;

But does not include the provision of a financial service in the territory of a Party by an investment in that territory;

A financial service provider of a Party: a person of a Party engaged in the business of providing financial services in its territory;

Provider of cross-border financial services of a Party: a person from a Party engaged in the business of providing financial services in its territory and seeking to carry out or perform the provision of cross-border financial services; and

Financial service: any financial service. Financial services comprise all insurance and insurance-related services and all banking and other financial services (excluding insurance), as well as ancillary or auxiliary services to a financial service. Financial services include the following activities:

Insurance and insurance related services

a) Direct insurance (including coinsurance):

(i) life insurance;

(ii) non-life insurance;

b) Reinsurance and retrocession;

c) Insurance intermediation activities, for example those of brokers and insurance agents; Y

d) Services auxiliary to insurance, for example consultants, actuaries, risk assessment and claims compensation.

Banking and other financial services (excluding insurance)

e) Acceptance of deposits and other repayable funds from the public;

f) Loans of all kinds, including personal loans, mortgage loans, factoring and financing of commercial transactions;

g) Leasing services;

h) All payment and money transfer services, including credit, payment and similar cards, traveler's checks and bank drafts;

i) Guarantees and commitments;

j) Trading for own account or clients, whether in a stock exchange, an over-the-counter market or otherwise, of the following:

Money market instruments (including checks, bills of exchange and certificates of deposit);

Foreign exchange;

Derivatives, including but not limited to futures and options;

Exchange and money market instruments, for example, swaps and forward interest rate agreements;

Transferable values;

Other negotiable instruments and financial assets, including metal;

k) Participation in issues of all kinds of securities, including subscription and placement as agents (publicly or privately) and the provision of services related to such issues;

l) Correction of changes;

m) Asset management, for example, cash or securities portfolio management, collective investment management in all its forms, pension fund administration, depository and custody services, and fiduciary services;

n) Payment and clearing services for financial assets, including securities, derivatives and other negotiable instruments;

o) Provision and transfer of financial information, financial data processing and related software by suppliers of other financial services; and

p) Advisory and intermediation services and other auxiliary financial services in respect of any of the activities referred to in subparagraphs (e) to (o), including credit reports and analysis, investment and securities portfolio studies and advice, and advice on Acquisitions and on corporate restructuring and strategy.

## **6.02. Scope of Application and Extent of Obligations**

1. This Chapter applies to measures adopted or maintained by a Party relating to: financial institutions of another Party;

Cross-border trade in financial services; and

Investors of another Party and investments of such investors in financial institutions in the territory of the Party.

2. Chapters Three (Investment) and Four (Cross-Border Trade in Services) apply to the measures described in paragraph 1, only to the extent that these Chapters or Articles of said Chapters are incorporated into this Chapter.

Articles 3.10 (Transfers), 3.11 (Expropriation and Compensation), 3.12 (Specialties Formalities and Information Requirements), 3.13 (Denial of Benefits), 3.14 (Environmental Measures) and 4.14 (Denial of Benefits) are incorporated into this Chapter And form an integral part thereof.

Section B of Chapter Three (Investor-State Dispute Settlement) is incorporated into and made a part of this Chapter only for claims that a Party has breached Article 3.10, 3.11, 3.12, or 3.13, as incorporated into this Chapter.

Article 4.13 (Transfers and Payments) is incorporated into and made a part of this Chapter to the extent that cross-border trade in financial services is subject to the obligations under Article 6.06.

3. This Chapter does not apply to measures taken or maintained by a Party relating to:

Activities or services that are part of a public retirement plan or a legal social security system; or

Activities or services performed on behalf of or with the Party's guarantee or using the financial resources of the Party, including its public entities,

However, this Chapter shall apply if a Party permits any of the activities or services referred to in subparagraph (a) or (b) to be performed by its financial institutions in competition with a public entity or a financial institution.

4. In case of incompatibility between the provisions of this Chapter and any other provision of this Agreement, the provisions of this Chapter shall prevail to the extent of the incompatibility.

## **6.03. National Treatment**

1. Each Party shall accord to investors of another Party treatment no less favorable than that it accords in similar

circumstances to its own investors with respect to the establishment, acquisition, expansion, administration, conduct, operation and sale or other disposition Of financial institutions and investments in financial institutions in its territory.

2. Each Party shall accord to financial institutions of another Party and investments of investors of another Party in financial institutions treatment no less favorable than that it accords, under similar circumstances, to its own financial institutions and investments of its own investors In financial institutions, with respect to the establishment, acquisition, expansion, administration, conduct, operation and sale or other disposition of financial institutions and investments.

3. For the purposes of the national treatment obligations of Article 6.06.1, a Party shall accord to providers of financial services of another Party treatment no less favorable than that it accords, under similar circumstances, to its own service providers With respect to the provision of the relevant service.

#### **6.04. Most-favored-nation Treatment**

Each Party shall accord to investors of another Party, to the financial institutions of another Party, investments by investors in financial institutions and to cross-border financial service providers of another Party, treatment no less favorable than that which it grants, in Similar circumstances, to investors, financial institutions, investors' investments in financial institutions and to cross-border financial service providers of any other Party or a non-Party.

#### **6.05. Market Access for Financial Institutions**

No Party shall adopt or maintain, with respect to financial institutions of another Party, measures that:

Impose limitations on:

The number of financial institutions, whether in the form of numerical quotas, monopolies, exclusive service providers or by requiring an economic needs test;

The total value of financial services assets or transactions in the form of numerical quotas or the requirement of an economic needs test;

The total number of financial services operations or the total amount of production of financial services, expressed in numerical units

In the form of quotas or by requiring an economic needs test; or

The total number of natural persons that can be used in a particular financial services sector or which a financial institution may employ and which are necessary for the provision of a specific financial service and are directly related to it in the form of numerical quotas Or by requiring an economic needs test; or

Restrict or prescribe specific types of legal person or joint venture through which a financial institution may provide a service.

For the purposes of this Article, "financial institutions of another Party" includes financial institutions that investors of another Party intend to establish in the territory of the Party.

#### **6.06. Cross-border Trade**

1. Each Party shall permit, on terms and conditions giving national treatment, that cross-border financial service providers of another Party provide the services specified in Annex 6.06.

2. Each Party shall permit persons located in its territory and its nationals wherever located to purchase financial services from cross-border financial service providers of another Party located in the territory of that other Party or of any other Party. This does not oblige a Party to allow such providers to do business or advertise on its territory. Each Party may define "do business" and "advertise" for the purposes of this obligation, subject to such definitions not inconsistent with paragraph 1.

3. Without prejudice to other means of prudential regulation of cross-border trade in financial services, a Party may require the registration of cross-border financial service providers of another Party and of financial instruments.

#### **6.07. Self-regulatory Bodies**

Where a Party requires a financial institution or a provider of cross-border financial services of another Party to be a member, participates, or has access to a self-regulated entity to provide a financial service within or towards its territory, the Party shall ensure that that body complies With the obligations of Article 6.03 and Article 6.04.

## **6.08. Recognition and Harmonization**

1. In applying the measures covered by this Chapter, a Party may recognize the prudential measures of another Party or of a non-Party. Such recognition may be granted unilaterally, achieved through harmonization or other means; Or on the basis of an agreement or arrangement of another Party or with the non-Party.
2. A Party granting recognition of prudential measures in accordance with paragraph 1 shall provide appropriate opportunities to any other Party to demonstrate that there are circumstances under which there are or will be equivalent regulations, supervision and enforcement, and, if applicable, Procedures for sharing information between the Parties.
3. Where a Party grants recognition to prudential measures in accordance with paragraph 1 and the circumstances set forth in paragraph 2 exist, that Party shall provide adequate opportunities to another Party to negotiate accession to the agreement or arrangement or to negotiate an agreement or similar arrangement.

## **6.09. Exceptions**

1. Nothing in this Chapter shall be construed as an impediment for a Party to adopt or maintain prudential measures for reasons such as:

To protect borrowers, investors, depositors or other creditors, holders or beneficiaries of policies or persons liable for fiduciary obligations by a financial institution or a provider of cross-border financial services;

Maintain the security, soundness, integrity or financial responsibility of financial institutions or cross-border financial service providers; and

Ensure the integrity and stability of that Party's financial system.

2. Nothing in this Chapter applies to non-discriminatory measures of general application adopted by a public entity in the conduct of monetary policies or related credit policies or exchange rate policies. This paragraph shall not affect the obligations of any Party arising from investment performance requirements with respect to measures covered by Chapter 3 (Investment).
3. A Party may prevent or limit transfers from a financial institution or a provider of cross-border financial services to or for the benefit of a subsidiary or a person related to that institution or to that service provider through the application Fair and non-discriminatory nature of measures relating to the maintenance of the security, soundness, integrity or financial responsibility of financial institutions or cross-border financial service providers. This paragraph is without prejudice to any other provision of this Chapter that allows a Party to restrict transfers.
4. Article 6.03 shall not apply to the granting of exclusive rights by a Party to a financial institution to provide one of the financial services referred to in Article 6.02.3 a).
5. For greater certainty, no provision in this Chapter shall be construed to prevent a Party from adopting or enforcing the measures necessary to ensure observance of laws or regulations that are not inconsistent with this Chapter, including those relating to prevention Misleading practices and fraudulent practices or to deal with the effects of a default of financial services contracts, subject to the requirement that such measures be not applied in a manner that could constitute a means of arbitrary or unjustifiable discrimination between countries where similar conditions prevail or a disguised restriction on investment in financial institutions or Cross-border trade in financial services.

## **6.10. Transparency**

1. The Parties recognize that transparent regulations and policies governing the activities of financial institutions and cross-border providers of financial services are important in facilitating foreign financial institutions and foreign providers of cross-border financial services, both market access for each Party, and to their operations therein. Each Party undertakes to promote regulatory transparency in financial services.
2. Instead of Article 10.03 (Publication), each Party, to the extent practicable:  
  
Publish in advance any regulations of general application relating to the subject matter of this Chapter that it intends to

adopt; and

Will provide interested parties and Parties with a reasonable opportunity to comment on the proposed regulations.

3. In adopting definitive regulations, a Party shall, to the extent practicable, consider in writing substantive comments received from interested parties with respect to the proposed regulations.

4. To the extent practicable, each Party shall allow a reasonable period to elapse between the publication of the final regulations and their entry into force.

5. Each Party shall ensure that rules of general application adopted or maintained by self-regulating organizations of the Party are published in a timely manner or are otherwise available in such a way that the persons concerned may become aware of them.

6. Each Party shall maintain or establish appropriate mechanisms to respond to inquiries of interested parties regarding measures of general application covered by this Chapter.

7. The regulatory authorities of each Party shall make available to the persons concerned the requirements, including any necessary documentation, for completing applications related to the provision of financial services.

8. At the request of an interested party, the regulatory authority of a Party shall inform it of the status of its request. Where the authority requires additional information from the applicant, it shall notify it without undue delay.

9. Within one hundred and twenty (120) days, the regulatory authority of a Party shall make an administrative decision on a full application by an investor in a financial institution, financial institution or cross-border financial service provider of another Party Related to the provision of a financial service and shall promptly notify the applicant of the decision. An application will not be considered complete until all relevant hearings have been held and all necessary information has been received. When it is not practicable to take a decision within a period of one hundred and twenty (120) days, the regulatory authority shall notify the interested party without undue delay and attempt to take the decision thereafter within a reasonable time.

## **6.11. Payment and Compensation Systems**

Each Party shall accord, on terms and conditions that accord national treatment, to the financial institutions of another Party established in its territory, access to the payment and compensation systems administered by public entities, and to the official means of financing and refinancing available in the course Of normal commercial operations. This paragraph is not intended to provide access to the facilities of the Party's lender of last resort.

## **6.12. Domestic Regulation**

Except in connection with the non-conforming measures listed in its Schedule III of Annex III (Financial Services), each Party shall ensure that all measures of general application to which this Chapter applies are administered in a reasonable, objective and impartial manner.

## **6.13. Expedited Availability of Insurance Services**

The Parties recognize the importance of maintaining and developing regulatory procedures to expedite the provision of insurance services by authorized providers.

## **6.14. Senior Management and Boards of Directors**

1. No Party may require financial institutions of another Party to employ personnel of any particular nationality to hold senior management positions or other essential positions.

2. Neither Party may require that the Board of Directors or the Board of Directors of a financial institution of another Party be composed of nationals of that Party resident in its territory or a combination of both.

## **6.15. General Inquiries**

1. Each Party may request consultations with another on any matter relating to this Treaty affecting financial services. The other Party shall give due consideration to the request. The Consultative Parties shall inform the Committee of the results of

their consultations during the meetings of the Consultative Committee.

2. Officials of the competent authorities of each Party listed in Annex 6.14 shall participate in the consultations provided for in this Article.

3. Each Party may request that the regulatory authorities of another Party intervene in consultations pursuant to this Article to discuss measures of general application of that other Party that may affect the operations of financial institutions or providers of cross-border financial services in the territory of the Party which requested the consultation.

4. Nothing in this Article shall be construed to require regulatory authorities to engage in consultations under paragraph 3 to disclose information or to act in a manner that would interfere with particular matters of regulation, Administration or implementation of measures.

5. In cases where, for supervisory purposes, a Party needs information on a financial institution in the territory of another Party or on providers of cross-border financial services in the territory of another Party, the Party may refer to the responsible regulatory authority in the territory Of the other Party to request the information.

6. Nothing in this Article shall be construed to require a Party to repeal its relevant legislation in relation to the exchange of information between financial regulators or the requirements of an agreement or agreement between the financial authorities of two or more Parties.

## **6.16. New Financial Services and Data Processing (16)**

1. Each Party shall permit a financial institution of another Party to provide any new financial service which that Party would be able to provide to its own financial institutions in similar circumstances without further legislative action by the Party. The Party may decide the institutional and legal modality through which such service is offered and may require authorization for the provision thereof. When such authorization is required, the respective decision shall be taken within a reasonable time and the authorization may only be denied for prudential reasons.

2. Each Party shall permit the financial institutions of another Party to transfer, for processing, information into or out of the territory of the Party, using any of the means authorized therein, where necessary to carry out the ordinary activities Of these institutions.

(16) The Parties understand that nothing in Article 6.16 prevents a financial institution of one Party from requesting the other Party to consider authorizing the provision of a financial service which is not provided in the territory of either Party. The application shall be subject to the national regulations of the Party to which the application is submitted, and for greater certainty, it shall not be subject to the obligations of Article 6.16.

## **6.17. Treatment of Certain Types of Information**

Nothing in this Chapter requires a Party to disclose or permit access to:

- a) information relating to financial affairs and individual client accounts of financial institutions or cross-border financial service providers; or
- b) any confidential information whose disclosure may impede compliance with the law or is otherwise contrary to the public interest or injures the legitimate business interests of particular companies.

## **6.18. Financial Services Committee**

1. The Financial Services Committee is established, whose composition is indicated in Annex 6.18. Likewise, representatives of other institutions may participate when deemed appropriate by the responsible authorities.

2. Without prejudice to Article 9.04 (Functions of Committees), the Committee shall have, inter alia, the following functions:

Supervise the implementation of this Chapter and its further development;

Consider aspects of financial services submitted to it by a Party;

Participate in dispute settlement procedures in accordance with Article 6.21; and

To facilitate the exchange of information between national supervisory authorities and to cooperate in the field of advisory

services on prudential regulation, with a view to harmonizing regulatory frameworks and other policies, where appropriate.

## **6.19. Reservations and Exceptions**

1. Articles 6.03 to 6.06 and 6.14 do not apply to:

a) any existing non-conforming measure which is maintained by a Party in

(i) the central level government, as established by that Party in its Schedule of

(ii) a local level government;

b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or

c) any amendment to any non-conforming measure referred to in subparagraph (a) provided that such amendment does not diminish the conformity of the measure, as it was in force immediately before the amendment, with Articles 6.03 to 6.05 or 6.14.

2. Annex 6.19.2 sets out certain specific commitments of each Party.

3. Annex 6.19.3 provides, for the purpose of transparency alone, additional information regarding certain aspects of financial services measures of a Party which it considers to be inconsistent with its obligations under this Chapter.

4. Articles 6.03 to 6.06 and 6.14 shall not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors or activities, as set forth in its Schedule III of Annex III (Financial Services).

5. A non-conforming measure established in a Party's Schedule to Annex I (Non-Conforming Measures) or Annex II (Measures to the Future) as a measure to which Article 3.04 (National Treatment), 3.05 (Most-Favored-Nation Treatment), 4.03 (Most Favored Nation Treatment), 4.04 (National Treatment) or 4.06 (Market Access) shall not be treated as a non-conforming measure to which Section 6.03, 6.04 or 6.05, as the case may be, does not apply, To the extent that the measure, sector, subsector or activity set out in the Schedule is covered by this Chapter.

## **6.20. Future Liberalization**

With a view to achieving a progressively higher level of liberalization and prior Council instruction, the Parties undertake to conduct future negotiations aimed at eliminating remaining non-conforming measures listed in accordance with Article 6.19.1.

## **6.21. Disputes between an Investor and a Party**

1. Except as provided in this Article, claims made by a disputing investor against a Party in relation to the obligations provided for in this Chapter shall be resolved in accordance with Section B of Chapter 3 (Dispute Settlement Investor - State).

2. When the Party against which the claim is made invokes any of the exceptions referred to in Article 6.09, the following procedure shall be followed:

a) The court shall refer the matter to the Financial Services Committee for its decision. The court may not proceed until it has received a decision of said Committee under the terms of this Article or sixty (60) days have passed since the date of receipt of the matter by said Committee;

b) Upon receipt, the Financial Services Committee shall decide upon and to what extent the exception to Article 6.09 invoked is a valid defense against the investor's claim and shall transmit a copy of its decision to the court and to the Board. That decision will be binding on the court.

## **6.22. Disputes between the Parties**

1. The mechanism for the settlement of commercial disputes between the Parties shall be applied, in the terms modified by this Article, to disputes arising between the Parties related to the interpretation and application of this Chapter.

2. The Financial Services Committee shall by consensus consist of a list of up to twenty-five (25) persons, including three (3) persons from each Party and ten (10) persons who are not nationals of either Party, who have the Aptitudes and dispositions necessary to act as arbitrators in disputes related to this Chapter.

3. Members of the list of financial services shall:

- a) have specialized knowledge or experience in financial law or the practice of financial services, which may include regulation of financial institutions;
- b) be chosen strictly on the basis of objectivity, reliability and good judgment;
- c) be independent of and not affiliated with or receive instructions from any Party; and
- d) comply with the Code of Conduct of the trade dispute resolution mechanism in force between the Parties.

4. Notwithstanding the provisions of the commercial dispute settlement mechanism in force between the Parties, when a court finds that a measure is inconsistent with this Treaty and the measure subject to controversy affects:

- a) only to the financial services sector, the complaining Party may suspend benefits only in the financial services sector. If the complaining Party considers that it is not feasible or effective to suspend benefits only in the financial services sector, it may suspend benefits in other sectors;
- b) the financial services sector and any other sector, the complaining Party may suspend benefits in the financial services sector having an effect equivalent to the effect of the measure in the financial services sector of the Party; or
- c) only to a sector other than financial services, the complaining Party shall not be able to suspend benefits in the financial services sector.

## **Annex 6.18. Financial Services Committee**

The authority of each Party responsible for financial services is:

- a) in the case of Costa Rica, the National Council for the Supervision of the Financial System (CONASSIF) and the Ministry of Foreign Trade for banking and other financial services and insurance;
- b) in the case of El Salvador, the Ministry of Economy, in consultation with the corresponding competent authority (Superintendency of the Financial System, Superintendency of Securities, Superintendence of Pensions and the Central Reserve Bank);
- c) in the case of Guatemala, the Superintendency of Banks, for banking and other financial services, the Ministry of Economy for insurance and securities and any other institutions approved by those authorities to participate in the Financial Services Committee;
- d) in the case of Honduras, the Central Bank of Honduras, the National Commission of Banks and Insurance and the Secretary of State in the Offices of Industry and Commerce; Y
- e) in the case of Nicaragua, the Ministry of Development, Industry and Commerce, the Superintendency of Banks and other Financial Institutions, the Superintendency of Pensions and the Ministry of Finance and Public Credit, for banking and other financial services and insurance;

Or their successors.

## **Annex 6.19.2. Specific Commitments**

### **Section A. Costa Rica**

Portfolio management

1. Costa Rica shall allow a financial institution (other than a fiduciary company) incorporated outside its territory to provide investment advice and portfolio management services, excluding (a) custody services, (b) fiduciary services, And (c) execution services that are not related to the administration of a collective investment fund, to a collective investment fund located in its territory. This commitment is subject to Article 6.02 and Article 6.06.3

2. Notwithstanding paragraph 1, Costa Rica may require that the ultimate responsibility for the management of a collective investment fund be assumed by an "investment fund management company" established in accordance with the Securities Market Regulatory Law, No 7732 dated December 17, 1997 for the case of investment funds or a "pension operator" set up under the Worker Protection Act No. 7983 of February 18, 2000 for the case of pension funds And supplementary pension funds.



3. For the purposes of paragraphs 1 and 2, a collective investment fund means an investment fund constituted in accordance with the Securities Market Regulatory Law, No. 7732 of December 17, 1997, or a pension fund or Supplementary pension fund constituted in accordance with the Worker Protection Act, No. 7983 of February 18, 2000.

Availability of expedited insurance services

4. Costa Rica should endeavor to consider policies or procedures such as: not to require approval of insurance other than insurance sold to natural persons, or compulsory insurance; To allow the introduction of products other than those that are disapproved within a reasonable period of time; And not to impose limitations on the number or frequency of product introductions.

## **Section B. El Salvador**

Portfolio management

1. El Salvador shall allow a financial institution (other than a trust company), established outside its territory, to provide investment advisory and portfolio management services, excluding (a) custody services, (b) services Fiduciaries and (c) execution services that are not related to the administration of a collective investment fund, to a collective investment fund located in the territory of El Salvador. This commitment is subject to Article 6.02 and Article 6.06.3.

2. The Parties recognize that El Salvador does not currently have legislation regulating the scheme for collective investment funds. Notwithstanding the provisions of paragraph 1, and no later than four years after the date of entry into force of this Agreement, El Salvador shall implement paragraph 1 by adopting a Special Law regulating collective investment funds, Which will provide a definition of collective investment funds as specified in paragraph 3.

3. For the purposes of paragraphs 1 and 2, collective investment fund shall have the meaning established under the Special Law that El Salvador will adopt as established in paragraph 2.

Availability of expedited insurance services

4. It is understood that El Salvador requires prior approval of products prior to the introduction of a new insurance product. El Salvador will provide that once a company applying for approval for said product registers the information with the Salvadoran supervising agency; The regulator shall issue an approval or disapproval in accordance with Salvadoran legislation for the sale of the new product within sixty (60) days. It is understood that El Salvador will not maintain limitations in the number or frequency in the introduction of new products.

## **Section C. Guatemala**

Portfolio management

1. Guatemala will allow financial institutions (other than a trust company), organized outside its territory, to provide investment advisory and portfolio management services, excluding (a) custody services, (b) trust services and C) execution services not related to the administration of collective investment schemes, to a collective investment scheme located in its territory. This commitment is subject to Article 6.02 and Article 6.06.3.

2. The Parties recognize that Guatemala currently does not allow insurance companies to manage collective investment schemes. When Guatemala allows insurance companies to administer collective investment schemes, Guatemala will comply with the requirements of paragraph 1.

3. For the purposes of paragraphs 1 and 2, collective investment scheme means an investment made in accordance with Articles 74, 75, 76, 77 and 79 of the Securities and Commodities Market Law, Decree No. 34-96 Of the Congress of the Republic.

Availability of expedited insurance services

4. It is understood that Guatemala requires prior approval before the introduction of a new insurance product. Guatemala will permit that once the company interested in such approval present the information with the supervisory authority, that authority will issue approval or denial in accordance with the laws of Guatemala for the sale of the new product within sixty (60) days. It is understood that Guatemala does not maintain any limitations on the number or frequency of product introduction.

## **Section D. Honduras**

#### Portfolio management

1. Honduras shall allow a financial institution (other than a trust company) organized outside its territory, to provide investment advice and portfolio management, excluding (a) custody services, (b) trust services and (c) Execution services not related to the administration of collective investment schemes, to a collective investment scheme located in its territory. This commitment is subject to Article 6.02 and Article 6.06.3.
2. Notwithstanding paragraph 1, Honduras may require that a collective investment scheme located in its territory bears the maximum responsibility for the management of the collective investment scheme or the funds it administers.
3. For the purposes of paragraphs 1 and 2, collective investment scheme shall have the meaning that is established in any future law, regulation or guidelines that define "collective investment scheme".

#### Availability of expedited insurance services

4. It is understood that Honduras, prior to the introduction of a new insurance product, requires prior approval. Honduras will provide that, once the company interested in the approval of said product registers the information in the National Commission of Banks and Insurance, the Commission may grant or not the approval for the sale of a new product, in accordance with its legislation Of a term of thirty (30) days. It is understood that Honduras does not maintain any limitation on the number or frequency of product introductions.

## **Section E. Nicaragua**

#### Portfolio management

1. Nicaragua shall allow a financial institution (other than a trust company), incorporated or organized outside its territory, to provide investment advisory and portfolio management services to administrators of a collective investment fund or pension fund located in Its territory, excluding (a) custody services, (b) fiduciary services and (c) enforcement services not related to the administration of a collective investment fund or a pension fund. This commitment is subject to Article 6.02 and Article 6.06.3.
2. Notwithstanding the provisions of paragraph 1, Nicaragua may require full liability for the management of collective investment funds and pension funds to be reserved respectively to the administrators of said funds established in its territory.
3. The Parties recognize that Nicaragua does not currently have legislation establishing collective investment funds and that its legislation related to pension funds is not being fully implemented. Notwithstanding the provisions of paragraph 1, at the time when Nicaragua adopts legislation, regulations or administrative guidelines

By establishing collective investment funds, Nicaragua will comply with paragraph 1 with respect to collective investment funds and provide a definition of collective investment funds to be added to paragraph 5. Notwithstanding paragraph 1, at the time Nicaragua implements its legislation related to pension funds, must comply with paragraph 1 regarding pension funds.

4. The Parties recognize that Nicaragua currently does not allow insurance companies to manage collective investment funds. Notwithstanding paragraph 1, at the time Nicaragua permits insurance companies to manage collective investment funds, it shall comply with paragraph 1 with respect to the management of collective investment funds by insurance companies.
5. For the purposes of paragraphs 1 to 3, the pension fund has the meaning established in the Law on the Savings System for Pensions, Law No. 340 (published in La Gaceta, Official Gazette, No. 72 of April 11 2000) and its regulations.

#### Availability of expedited insurance services

6. Nicaragua should seek to maintain existing opportunities, or may wish to consider policies or procedures such as: not requiring the approval of products for insurance other than those sold to natural persons or compulsory insurance; Permit the introduction of products, unless such products are rejected within a reasonable time; And not impose limitations on the number of products that can be introduced or the frequency with which they are introduced.

#### Insurance Branches

7. Notwithstanding Nicaragua's non-conforming measures in Annex III, Section B, referring to market access in insurance, excluding any part of such non-conforming measures referring to financial conglomerates and social services, Nicaragua, no

later than four (4) years After the entry into force of this Agreement, will allow insurance providers of the Parties to establish themselves in their territory through branches. Nicaragua may choose how to regulate branches, including its characteristics, structure, relationship with its parent company, capital requirements, technical reserves and obligations related to risk capital and its investments.

### **Annex 6.19.3. Additional Information Relating to Financial Services Measures**

Each Party listed below has provided the following descriptive and explanatory information regarding certain aspects of financial services measures for transparency purposes only.

#### **Section A. Costa Rica**

Pension fund managers may invest up to twenty-five (25) percent of the fund's assets in securities issued by foreign financial institutions. This limit may be increased up to fifty (50) per cent if the actual return on investments in the supplementary pension scheme is equal to or less than international income.

#### **Section B. El Salvador**

With respect to Banking:

a) Controlling companies of banks and other foreign financial institutions are subject to consolidated supervision in accordance with relevant international practices. The Superintendency of the Financial System, following the opinion of the Central Reserve Bank, will issue the instructions to determine the institutions that will be eligible.

b) Banks and other foreign financial institutions must meet the requirements of regulation and prudential supervision in their countries of origin in accordance with relevant international practices.

c) To be authorized to establish a branch of a bank in El Salvador, a foreign bank must meet the following requirements:

(i) Establishment: To obtain authorization to establish a branch, a foreign bank must:

a) verify that the parent company is legally established in accordance with the laws of the country in which it was constituted and that such country subjects the bank to prudential regulation and supervision according to international uses in this matter and that is classified as first Line, by an internationally recognized risk classifier;

b) to verify that, in accordance with the laws of the country where it is constituted and its own statutes, it may agree on the establishment of branches, agencies and offices that meet the requirements of the Banking Law and that the parent company as the government authority responsible for Supervision of the institution in their country of origin have duly authorized the operation of the institution in El Salvador;

c) undertake to permanently maintain in El Salvador at least one representative with sufficient and sufficient powers to perform all acts and contracts to be held and to take effect in El Salvador. The power must be granted in a clear and precise way to bind the institution represented, responding unlimitedly in and outside the country for the acts that are signed and contracts signed in El Salvador and fulfilling both the requirements required by Salvadoran law and The law of the country where the foreign institution is constituted;

d) undertake to establish and maintain in El Salvador the amount of capital and capital reserves which, in accordance with the provisions of the Banking Law, corresponds to the Salvadoran banks;

e) to prove that it has been operating for at least five years and that the results of its operations have been satisfactory, according to reports from the supervisory entity of the country where the foreign bank is incorporated and internationally recognized risk classifiers; and,

f) to submit expressly to the laws, courts and authorities of El Salvador, in relation to the acts that it concludes and contracts that it subscribes in El Salvador or that they will have effects in the same.

(ii) In such cases, the Superintendency of the Financial System must sign a memorandum of cooperation with the supervisor of the country where the investor entity is established.

(iii) Foreign banks authorized to operate in El Salvador will be subject to the inspection and supervision of the Superintendency of the Financial System, will enjoy the same rights and privileges, will be subject to the same laws and will be governed by the same rules applicable to domestic banks.

## **Section C. Honduras**

1. Banks and savings and loan associations may not provide loans to natural persons or legal entities domiciled abroad unless the Central Bank of Honduras authorizes credits.
2. A branch of a foreign bank is not required to have its own board of directors or administrative council, but must have at least two representatives domiciled in Honduras. Such representatives are responsible for the overall management and administration of the business and have the legal authority to act in Honduras and to execute and respond to the operations of the branch.
3. The founding members of financial institutions organized under the laws of Honduras must be natural persons.
4. The operation, function, services and issuance of any new financial product with a direct and immediate relationship to banking activities or loans shall be approved by the National Banking and Insurance Commission.
5. Shares in a foreign investment fund may be traded on the territory of Honduras only if there is a reciprocity agreement at the government level or at the level of the relevant supervisory authorities of the country of origin of the investment fund and in the country in which shares are traded.
6. Corporations that classify risk and choose to organize under Honduran law must be incorporated as an anonymous corporation and must have in Honduras a permanent legal representative with sufficient and sufficient power to undertake any legal act for the provision of risk classification services in Honduras.

## **Section D. Nicaragua**

1. Nicaragua reserves the right to deny an operating license to a financial institution or group (except an insurance financial institution or group) when another Party has denied or canceled an operating license to that same financial institution or group.
2. To maintain a branch in Nicaragua, a bank established and organized abroad must:
  - a) be legally authorized and by their statutes, to operate in their country of origin and to establish branches in other countries;
  - b) prior to the establishment of said branch, present certification issued by the supervisory authority of the country where the bank is established and organized, stating the agreement of that authority with which the Bank, under its supervision, establishes a branch in Nicaragua; and
  - c) assign to the branch, the capital that meets the minimum requirements.Said branch must have its address in Nicaragua.
3. To maintain a branch in Nicaragua, a non-bank financial institution, organized and incorporated under the laws of a foreign country, must:
  - a) be legally authorized and by its statutes, to operate in the country where it is organized and established and to establish branches abroad;
  - b) prior to the establishment of said branch, must submit a certificate issued by the supervisory authority of the country where that institution is constituted and organized, which establishes the agreement of the authority with which that institution establishes a branch in Nicaragua.
  - c) assign to that branch, the capital that meets the minimum requirements; and
  - d) in the case of FONCITUR, the capital and all its funds must be invested in Nicaragua in the projects registered with the Nicaraguan Institute of Tourism (INTUR).Said branch must have its address in Nicaragua.
4. For the purposes of this paragraph and paragraph 3,

- a) non-bank financial institutions means an institution that operates as a source of funds from the public in the form of deposits; as a listed institution or institution; as general store of a financial deposit; as a leasing or leasing entity; and as FONCITUR; and

B) FONCITUR means a Capital Investment Fund for Tourism.

5. A representative office of a foreign bank may place funds in the country in the form of credits and investments, and act as information centers for its clients, however, it is prohibited to raise funds from the public in Nicaragua.

6. Pension fund administrators may place up to thirty (30) percent of the fund's assets abroad. However, the Superintendency of Pensions retains the power to vary the limits on investments made by pension fund managers at national and foreign levels.

## **Chapter 7. Temporary Entry of Business Persons**

### **7.01. Definitions**

1. For the purposes of this Chapter, the following definitions shall apply:

Business activities: those legitimate commercial activities created and operated for the purpose of gaining profits in the market. It does not include the possibility of obtaining employment, nor salary or remuneration coming from labor source in the territory of a Party;

Labor certification: the procedure carried out by the competent administrative authority to determine whether a national of one Party, who intends to enter temporarily in the territory of another Party, displaces national labor in the same labor branch or significantly impairs the working conditions of the same;

Temporary entry: the entry of a business person from one Party into the territory of another Party, without the intention of establishing permanent or permanent residence;

National: a "national", as defined in Article 2.01 (Definitions of general application), but does not include permanent or permanent residents;

Business person: a national participating in the trade in goods or provision of services, or in investment activities; and

Recurrent practice: a practice executed by the migratory authorities of a Party in a repetitive manner during a representative period prior to and immediately following the execution of the same.

2. For the purposes of Annex 7.04, the following definitions shall apply:

Executive functions: those functions assigned within an organization, under which the business person essentially has the following responsibilities:

- a) directing the administration of the organization or a relevant component or function thereof;
- b) establish the policies and objectives of the organization, component or function; or
- c) receive supervision or general management only from senior executives, the board of directors or the board of directors of the organization or the shareholders of the same;

Managerial functions: those functions assigned within an organization, under which the business person essentially has the following responsibilities:

- a) direct the organization or an essential function within it;
- b) supervise and control the work of other professional employees, supervisors or administrators;
- c) have the authority to contract and dismiss, or recommend such actions, as well as others regarding the management of the personnel being directly supervised by that person and to perform functions at the higher level within the organizational hierarchy or with respect to the function to its position; or
- d) to execute actions at their discretion regarding the daily operation of the function over which that person has the authority; and

Functions involving special knowledge of the goods, services, research, equipment, techniques, administration of the organization or its interests and its application in international markets, or an advanced level of knowledge or experience in The processes and procedures of the organization.

## **7.02. General Principles**

This Chapter reflects the preferential trade relationship between the Parties, the advisability of facilitating temporary entry in accordance with the principle of reciprocity and the establishment of transparent criteria and procedures for this purpose. It also reflects the need to ensure the security of borders and to protect the national workforce and permanent employment in their respective territories.

## **7.03. General Obligations**

1. Each Party shall apply measures relating to the provisions of this Chapter in accordance with Article 7.02 and in particular shall apply them expeditiously in order to avoid undue delays or prejudice in trade in goods and services or in investment activities Included in this Treaty.
2. The Parties shall endeavor to develop and adopt common criteria, definitions and interpretations for the implementation of this Chapter.

## **7.04. Temporary Entry Authorization**

1. In accordance with the provisions of this Chapter, including those contained in Annexes 7.04 and 7.04 (1), each Party shall authorize the temporary entry of business persons who comply with other applicable measures relating to public health and safety, and Those related to national security.
2. A Party may deny the issuance of an immigration document authorizing employment to a business person when its temporary entry adversely affects:
  - a) the solution of any labor dispute in progress in the place where it is used or will be used; or
  - b) the employment of any person involved in that conflict.
3. When a Party denies the issuance of an immigration document authorizing employment, in accordance with paragraph 2, that Party:
  - a) inform in writing the reasons for the refusal to the business person concerned; Y
  - b) at the request of the Party to whose national the entry is refused, the reasons for the refusal shall be notified without delay and in writing.
4. Each Party shall limit the amount of the fees for the processing of applications for temporary entry at the approximate cost of the services rendered, unless the Parties have agreed in the past to eliminate those entitlements.
5. The authorization of temporary entry under this Chapter does not replace the requirements required for the exercise of a profession or activity in accordance with the specific regulations in force in the territory of the Party authorizing temporary entry.

## **7.05. Provision of Information**

1. In addition to the provisions of Article 10.02 (Information Center), each Party shall:
  - a) to provide to another Party the informational material that allows him to know the measures that adopts relative to this Chapter; and
  - b) no later than six (6) months after the date of entry into force of this Agreement, prepare, publish and make available to interested parties, on their own territory and on the territory of another Party, a consolidated document containing material That explains the requirements for temporary entry under this Chapter, so that the business persons of another Party may know them.
2. Each Party shall collect, maintain and make available to another Party information relating to the granting of authorizations for temporary entry, in accordance with this Chapter, to business persons of another Party to whom migratory documentation has been issued. This collection will include information for each authorized category.

## **7.06. Dispute Settlement**

1. A Party may not initiate a dispute settlement procedure under the dispute settlement mechanism in force between the Parties in respect of a refusal to authorize temporary entry under this Chapter or in respect of any particular case falling within Article 7.03, unless:

a) the case concerns a recurrent practice; and

b) the business person concerned has exhausted the administrative remedies available to him in respect of that particular case.

2. The remedies referred to in paragraph 1 b) shall be considered exhausted when the competent authority has not issued a final decision within six (6) months, counted from the beginning of the administrative proceeding, and the resolution has not been delayed by causes attributable to The business person concerned.

## **7.07. Relationship with other Chapters**

Nothing in this Agreement shall impose any obligation on the Parties with respect to their migratory measures.

## **Annex 7.04. Temporary Entry of Business Persons**

### **Section A. Business Visitors**

1. Each Party shall authorize the temporary entry and issue supporting documentation to the business person intending to carry out any business activity mentioned in Appendix 7.04 (A) (1), without requiring any other requirements than those established by the current migratory measures Applicable to temporary entry, and which exhibits:

a) proof of nationality of a Party; and

b) the purpose of your entry.

2. Each Party shall authorize the temporary entry, on terms no less favorable than those provided for in the measures indicated in Appendix 7.04 (A) (2), to business persons intending to carry out certain business activities other than those indicated In Appendix 7.04 (A) (1).

3. Neither Party may:

a) require, as a condition for authorizing temporary entry under paragraph 1 or 2, prior approval procedures, petitions, labor certification tests or other procedures having a similar effect; or

b) impose or maintain numerical restrictions on temporary entry in accordance with paragraph 1 or 2.

4. Notwithstanding paragraph 3, a Party may require the business person requesting temporary entry under this Section to obtain a visa or equivalent document prior to entry. The Parties shall consider avoiding or eliminating visa requirements or equivalent documents.

### **Section B. Merchants and Investors**

1. Each Party shall authorize the temporary entry and issue supporting documentation to the business person exercising supervisory, executive or specialized functions, provided that the person also complies with the current immigration measures applicable to temporary entry and which seeks to:

a) carry out a substantial commercial exchange of goods or services, principally between the territory of the Party of which the business person is a national and the territory of another Party to which the entry is requested; or

b) establish, develop, manage or provide technical advice or services to manage an investment in which the business person or company has committed, or are in the process of committing, a significant amount of capital.

2. Neither Party may:

a) require labor certification tests or other procedures of similar effect, as a condition for authorizing temporary entry under paragraph 1; or

b) impose or maintain numerical restrictions in relation to temporary entry under paragraph 1.

3. Notwithstanding the provisions of paragraph 2, a Party may require the business person requesting temporary entry under this Section to obtain a visa or equivalent document prior to entry. The Parties shall consider avoiding or eliminating visa requirements or equivalent documents.

## **Section C. Transfers of Personnel Within a Company**

1. Each Party shall authorize temporary entry and issue supporting documentation to the business person employed by an enterprise who intends to perform managerial, executive or specialized functions in that enterprise or one of its subsidiaries or affiliates provided that it complies With the current migratory measures applicable to temporary entry. Each Party may require the person to have been employed by the company on a continuous basis for six (6) months, within three (3) years immediately preceding the filing date of the application.

2. Neither Party may:

A) require labor certification tests or other procedures of similar effect as a condition for authorizing temporary entry under paragraph 1; or

(B) impose or maintain numerical restrictions in relation to temporary entry under paragraph 1.

### **Annex 7.04(1). Specific Provisions for the Temporary Entry of Business People**

1. Business persons entering under any of the categories set out in Annex 7.04 shall be deemed to perform activities that are useful or advantageous to the country.

2. The business people who enter under any of the categories established in Annex 7.04, will be subject to the migratory dispositions in force.

3. Business persons who enter under any of the categories established in Annex 7.04, may not request permanent stay unless they comply with the current immigration measures.

### **Appendix 7.04(A)(1). Business visitors**

#### Research and design

- Technical, scientific and statistical researchers conducting research independently or for a company established in the territory of another Party.

#### Cultivation, manufacturing and production

- Purchasing and production personnel, at managerial level, carrying out commercial operations for a company established in the territory of another Party.

#### Commercialization

- Researchers and market analysts conducting research or analysis independently or for a company established in the territory of another Party.

- Staff of fairs and of promotion that attends commercial conventions.

#### Customer Service

- Representatives and sales agents who order or negotiate contracts for goods and services for a company established in the territory of another Party but not delivering the goods or rendering services.

- Buyers who make acquisitions for a company established in the territory of another Party.

#### Distribution

- Customs agents providing advisory services to facilitate the import or export of goods.

#### Post-sale services

- Installation, repair, maintenance and supervision personnel who have the technical expertise essential to fulfill the seller's contractual obligation; And to provide services or train workers to provide such services under a warranty or other service



contract relating to the sale of commercial or industrial equipment or machinery, including computer software purchased from a company established outside the territory of The Party to which temporary entry is requested, during the term of the warranty or service agreement.

#### General services

Consultants who carry out business activities at the level of cross-border service provision.

Management and supervisory personnel involved in commercial operations for a company established in the territory of another Party.

Financial services personnel providing advice to a company established in the territory of another Party.

Public relations and publicity staff who provide clients with advice or attend or participate in conventions.

Tourism personnel (travel agents, travel agents, tour guides or tour operators) who attend or participate in conventions or conduct any excursion that has taken place in the territory of another Party.

Tour bus operators entering a Party's territory:

(A) with a group of passengers on a tourist bus trip which has commenced in the territory of another Party and is to return thereto;

(B) to pick up a group of passengers on a tourist bus trip which shall terminate, and shall be for the most part carried out in the territory of another Party; or

(C) with a group of passengers on a tourist bus whose destination is in the territory of the Party to which temporary entry is requested, and which returns without passengers or with the group to be transported to the territory of another Party.

Translators or interpreters who provide services as employees of a company established in the territory of another Party.

### **Appendix 7.04(A)(2). Existing Migration Measures**

For the case of Costa Rica:

The Law on Immigration and Immigration, Law No. 8487 of November 22, 2005 and its Regulations.

For the case of El Salvador:

a) Law on Migration, Legislative Decree No. 2772 dated December 19, 1958, published in Official Gazette No. 240, volume 181, dated December 23, 1958;

b) Regulation of the Migration Law, Executive Decree No. 33 dated March 9, 1959, published in Official Gazette No. 56, volume 182, dated March 31, 1959;

c) Aliens Act, Legislative Decree No. 299 dated February 18, 1986, published in Official Gazette No. 34, Volume 290, dated February 20, 1986; and

c) The CA-4 Regional Agreement on Migratory Procedures for the Extension of the Central American Single Visa, Scope of the Framework Treaty and the Mobility of Persons in the Region dated June 30, 2005 and effective as of July 1, 2005.

In the case of Guatemala:

a) Decree No. 95-98 of the Congress of the Republic, Migration Law, published in the Official Gazette of Central America on December 23, 1998;

b) Government Agreement No. 529-99, Migration Regulations, published in the Official Gazette of Central America on July 29, 1999; and

c) The CA-4 Regional Agreement on Migratory Procedures for the Extension of the Central American Single Visa, Framework Agreement, and Mobility of Persons in the Region dated June 30, 2005 and effective as of July 1, 2005.

In the case of Honduras:

a) Decree No. 208-2003, Law on Migration and Aliens dated March 3, 2004;

b) Agreement No 18-2004, Regulations of the Law on Migration and Aliens, dated May 3, 2004;

c) Agreement No 21-2004, dated June 8, 2004;

d) Agreement No. 8 Procedures on Migratory Facilities for Foreign Investors and Traders, published in the Official Gazette "La Gaceta" on August 19, 1998; and

e) The CA-4 Regional Agreement on Migratory Procedures for the Extension of the Central American Single Visa, Scope of the Framework Treaty and the Mobility of Persons in the Region dated June 30, 2005 and effective as of July 1, 2005.

For the case of Nicaragua:

a) Law No. 153 of February 24, 1993, published in the Official Gazette "La Gaceta" N° 80 of 30 April 1993, Chapter II, Articles 7 to 40;

b) Law No. 154 of March 10, 1993, published in the Official Gazette "La Gaceta" N° 81 of 3 May 1993, article 13;

c) Decree No. 628, Pensioners or Rentistas of Nicaragua Act, published in the Official Gazette "La Gaceta" No. 264 of November 19, 1974; and

d) The CA-4 Regional Agreement on Migratory Procedures for the Extension of the Central American Single Visa, Scope of the Framework Treaty and the Mobility of Persons in the Region dated June 30, 2005 and effective as of July 1, 2005.

## **Chapter 8. Exceptions**

### **8.01. Definitions**

For the purposes of this Chapter, the following definitions shall apply:

Tax agreement: an agreement to avoid double taxation or another international agreement or arrangement in tax matters;

Fund: the International Monetary Fund;

Payments for current international transactions: "payments for current international transactions", as defined in the Agreement Establishing the Fund;

International capital transactions: "international capital transactions", as defined in the Agreement Establishing the Fund; and

Transfers: international transactions and international transfers and related payments.

### **8.02. General Exceptions**

Article XIV of the GATS (including the footnotes) is incorporated into and forms an integral part of this Agreement, mutatis mutandis. The Parties understand that the measures referred to in Article XIV(b) of the GATS include environmental measures necessary to protect human, animal or plant life or health.

### **8.03. National Security**

Nothing in this Agreement shall be construed as:

a) oblige a Party to provide or give access to information the disclosure of which it considers to be contrary to the essential interests of its security;

b) prevent a Party from taking any action it deems necessary to protect the essential interests of its security:

(i) on trade in armaments, ammunition and war material and on trade and operations on goods, materials, services and technology carried out for the direct or indirect purpose of providing supplies to a military or other defense establishment;

(ii) applied in times of war or in other cases of serious international tension; or

(iii) relating to the implementation of national policies or international agreements on the non-proliferation of nuclear weapons or other nuclear explosive devices; neither

c) prevent a Party from taking any action in fulfillment of its obligations under the Charter of the United Nations for the maintenance of international peace and security.

## **8.04. Balance of Payments**

1. Nothing in this Agreement shall be construed to prevent a Party from adopting or maintaining measures restricting transfers where the Party faces serious threat to or threat thereof in the balance of payments provided that the restrictions are compatible with this article.

2. As soon as practicable after a Party applies a measure under this Article, in accordance with its international obligations, the Party shall:

a) subject to review by the Fund all restrictions on current account transactions in accordance with Article VIII of the Agreement Establishing the Fund;

b) initiate good faith consultations with the Fund on economic adjustment measures aimed at addressing the underlying economic problems underlying the difficulties; and

c) seek to adopt or maintain economic policies consistent with such consultations.

3. Measures implemented or maintained in accordance with this Article shall:

a) to avoid unnecessary damage to the commercial, economic or financial interests of another Party;

b) not be more onerous than necessary to deal with the balance of payments difficulties, or the threat thereof;

c) be temporary and phase out as the balance of payments situation improves;

d) be compatible with those of paragraph 2 c), as well as with the Agreement Establishing the Fund; and

e) be applied in accordance with the most favorable, between the principles of national treatment and most favored nation.

4. A Party may adopt or maintain a measure under this Article that gives priority to services essential to its economic program, provided that the Party does not apply the measure in order to protect an industry or sector in particular, unless the measure is consistent with paragraph 2 (c) and Article VIII (3) of the Agreement Establishing the Fund.

5. Restrictions on transfers:

a) shall be compatible with Article VIII (3) of the Agreement Establishing the Fund, when applied to payments for current international transactions;

b) shall be compatible with Article VI of the Agreement Establishing the Fund and be applied only in conjunction with measures on payments for current international transactions in accordance with paragraph 2 (a), when applied to international capital transactions; and

c) may not take the form of tariff surcharges, quotas, licenses or similar measures.

## **8.05. Exceptions to the Disclosure of Information**

Nothing in this Agreement shall be construed to oblige a Party to provide or give access to confidential information, the disclosure of which may prevent compliance with or be contrary to its Political Constitution, the public interest or its laws with respect to Protection of the privacy of individuals, financial affairs and bank accounts of individual clients of financial institutions, or that could harm the legitimate commercial interest of private companies, whether public or private.

## **8.06. Taxation**

1. Except as provided in this Article, nothing in this Agreement shall apply to taxation measures.

2. Nothing in this Agreement shall affect the rights and obligations of any Party deriving from any tax convention. In case of incompatibility between any of these Conventions and this Agreement, they shall prevail to the extent of the incompatibility. In the case of a tax convention between two or more Parties, the competent authorities under that agreement shall have sole responsibility for determining whether there is any inconsistency between this Agreement and that agreement.

3. Subject to the provisions of paragraph 2:

a) Article 4.04 (National Treatment) and Article 6.03 (National Treatment), shall apply to tax measures on income, capital gains, or taxable capital of companies relating to the acquisition or consumption of specific services, Except that nothing in

this subparagraph shall prevent a Party from conditioning the receipt of an advantage or continuing to receive it in connection with the acquisition or consumption of specific services, the requirement to provide the service in its territory, and

b) Articles 3.04 (National Treatment) and 3.05 (Most-Favored Nation Treatment), Articles 4.03 (Most-Favored Nation Treatment) and 4.04 (National Treatment) and Articles 6.03 (National Treatment) and 6.04 (Most Favored Nation Treatment) will apply to all tax measures, except those on income, capital gains, or on taxable corporate capital, estate taxes, inheritance, donations And generation-skipping transfers,

Except that nothing in the Articles shall apply:

a) no most-favored-nation obligation in respect of the benefit conferred by a Party in pursuance of any tax convention;

b) to any non-conforming provision of any existing tax measure;

c) the continuation or prompt renewal of a non-conforming provision of any existing tax measure;

d) to a reform of a non-conforming provision of any existing tax measure, as long as that reform does not reduce, at the time of making, its degree of conformity with any of those Articles;

e) to the adoption or enforcement of any tax measure aimed at ensuring the application and collection of taxes in an equitable and effective manner (as permitted by GATS Article XIV (d)); or

f) a provision which conditions the receipt or continued receipt of an advantage in respect of contributions to, or income from, fiduciary pensions or pension schemes, on the requirement that the Party maintains continuing jurisdiction over the trust pension or The pension plan.

4. Subject to the provisions of paragraph 2, Article 3.07.3 to 3.07.8 and 3.07.10 (Performance Requirements) shall apply to tax measures.

5. Article 3.11 (Expropriation and Compensation) and Article 3.17 (Submission of a Claim to Arbitration) shall apply to a tax measure that is alleged to be expropriatory. However, no investor may invoke Article 3.11 as a basis for a claim where it has been determined in accordance with this paragraph that the measure does not constitute an expropriation. An investor seeking to invoke Article 3.11 in respect of a tax measure must first submit the matter to the competent authorities of the complaining and defendant Party identified in Annex 8.06 at the time of delivery of the notice of its intention to submit a claim to arbitration Pursuant to Article 3.17.2, for that authority to determine whether the measure constitutes an expropriation. If the competent authorities do not agree to examine the matter or if, having agreed to examine it, they do not agree that the measure does not constitute an expropriation, within a period of six months after the matter has been referred to, the investor may submit his claim To arbitration, in accordance with Article 3.17.

## **Annex 8.06. Competent Authorities**

For the purposes of this Chapter, competent authorities means:

a) in the case of Costa Rica, the Deputy Minister of Finance;

b) in the case of El Salvador, the Deputy Minister of Finance;

c) in the case of Guatemala, the Deputy Minister of Public Finance;

d) in the case of Honduras, the Undersecretary of Finance;

e) in the case of Nicaragua, the Deputy Minister of Finance and Public Credit; Or their successors.

## **Chapter 9. Administration of the Treaty**

### **9.01. Administration**

The Council shall be responsible for administering this Treaty. The Council may delegate the functions conferred herein to any other organ of the subsystem of Central American economic integration.

### **9.02. Functions of the Council**

In addition to the functions of the Council established within the framework of the subsystem of Central American economic integration, for the purposes of this Treaty, the Council shall have the following functions:

- a) supervise the implementation and development of the Treaty;
- b) to issue interpretations on the provisions of this Treaty;
- c) supervise the work of the Committees established under this Treaty; and
- d) to know of any other matter that could affect the operation of this Treaty.

### **9.03. Committees**

1. The Committees shall meet by agreement of the Parties or by instructions of the Council and shall adopt their recommendations in accordance with the instruments of Central American economic integration.
2. The Committees shall inform the authorities listed in Annex 9.03.2 on the results of each meeting for proper follow-up.
3. The Council may establish such Committees as may be necessary to deal with the various aspects related to this Treaty.

### **9.04. Functions of the Committees**

1. The Committees shall have, among others, the following functions:
  - a) to monitor the implementation of the chapters of this Treaty that are within its competence;
  - b) to recommend to the Council proposals for amendments to the provisions of this Treaty; and
  - c) fulfill the other tasks entrusted to it by the Council.
2. All decisions of the Committees shall be adopted by consensus, unless the Committees decide otherwise.

#### **Annex 9.03.2.**

The competent authorities shall be:

- a) in the case of Costa Rica, the Director General of Foreign Trade, or the authority designated;
- b) in the case of El Salvador, the Director of the Administration of Commercial Treaties of the Ministry of Economy, or the authority to be designated;
- c) in the case of Guatemala, the Director of Administration of Foreign Trade, or the authority that is designated;
- d) in the case of Honduras, the Director General of Economic Integration and Trade Policy of the Secretariat of State in the Offices of Industry and Commerce;
- e) in the case of Nicaragua, the Director General of Foreign Trade of the Ministry of Development, Industry and Commerce, or the authority that is designated;

Or their successors.

## **Chapter 10. Transparency**

### **10.01. Definitions**

For the purposes of this Chapter, "administrative resolution of general application" means an administrative resolution or interpretation that applies to all persons and situations of fact that generally fall within its scope, and which establishes a norm of conduct, but not It includes:

- a) Resolutions or rulings in administrative proceedings that apply to a particular person, merchandise or service of another Party in a specific case; or
- b) a ruling that decides on a particular act or practice.

## **10.02. Information Center**

1. Each Party shall designate a unit or office as an Information Center to facilitate communication between the Parties on any matter covered by this Treaty.
2. When a Party so requests, the Information Center of another Party shall indicate the dependency or official responsible for the matter and shall provide such support as may be required to facilitate communication with the requesting Party.

## **10.03. Publication**

1. Each Party shall ensure that its laws, regulations, procedures and administrative rulings of general application relating to any matter covered by this Agreement are published as soon as possible or made available to the Parties and to any interested party.
2. To the extent possible, each Party shall:
  - a) make any proposed measures known in advance; and
  - b) provide the persons and other Party with a reasonable opportunity to comment on the proposed measure (s).

## **10.04. Provision of Information**

1. Each Party shall notify to the other Party, to the extent possible, any measures in force or in draft which it considers might materially affect or affect the interests of that other Party under the terms of this Agreement.
2. Each Party, at the request of another Party, shall provide information and promptly answer any questions it may have regarding any measures in force or under consideration.
3. The notification or provision of information referred to in this Article shall be made without prejudice to whether or not the measure is compatible with this Treaty.

## **10.05. Guarantees of Hearing, Legality and Due Process**

1. The Parties reaffirm the assurances of fairness, due process and due process enshrined in their respective legislations within the meaning of articles 10.06 and 10.07.
2. Each Party shall ensure that, in its judicial and administrative proceedings relating to the application of any measure referred to in Article 10.03 (1), which affects the rules of this Treaty, the essential procedural formalities are observed, and Motivate the legal cause of it.

## **10.06. Administrative Procedures for the Adoption of Measures of General Application**

In order to administer in a compatible, impartial and reasonable manner all measures of general application affecting the aspects covered by this Agreement, each Party shall ensure that in its administrative procedures in which the measures referred to in Article 10.03 are applied 1) In respect of persons, goods or services in particular of another Party in specific cases:

- a) where possible, persons of that other Party who are directly affected by a proceeding receive, in accordance with domestic provisions, a reasonable notice of commencement of the proceedings, including a description of their nature, the declaration of authority to the Which is legally responsible for initiating it and a general description of all the issues at issue;
- b) where the time, nature of the proceedings and the public interest permit, such persons are given a reasonable opportunity to present facts and arguments in support of their claims, prior to any final administrative action; and
- c) its procedures are in accordance with its legislation.

## **10.07. Review and Challenge**

1. Each Party shall maintain judicial or administrative courts or proceedings for the purpose of prompt review and, where appropriate, the correction of definitive administrative actions related to matters covered by this Agreement. These courts shall be impartial and shall not be bound by the agency or the authority responsible for administrative enforcement of the

law and shall have no material interest in the outcome of the case.

2. Each Party shall ensure that, before such courts or in such proceedings, the parties have the right to:

- a) a reasonable opportunity to support or defend their respective positions; and
- b) a resolution based on the evidence and arguments presented by them.

3. The Party shall ensure that, subject to the means of challenge or review, or that it may be brought in accordance with its legislation, such resolutions shall be implemented by the authorities or authorities.

## **Chapter 11. Final Provisions**

### **11.01. Amendments**

1. The Parties may agree by mutual agreement on any amendment to this Agreement. The original texts of any amendment shall be deposited with the Depositary, which shall deliver a certified copy to each Party without delay.

2. Amendments shall form an integral part of this Agreement and shall enter into force on the date on which all Parties have notified in writing to the Depositary that they have been adopted in accordance with domestic legal procedures or on such other date as the Parties may agree.

### **11.02. Amendments to the WTO Agreement**

If any provision of the WTO Agreement that the Parties have incorporated into this Agreement is amended, the Parties shall consult with a view to amending the appropriate provision of this Agreement, as appropriate, in accordance with Article 11.01.

### **11.03. Reservations**

This Treaty shall not be subject to reservations or unilateral interpretative declarations.

### **11.04. Duration**

This Treaty shall have an indefinite duration and shall enter into force thirty (30) days after the date of deposit of the second instrument of ratification for the first two (2) depositors, and for the remainder, eight (8) days after Date of deposit of its respective instrument.

### **11.05. Denunciation**

- 1. This instrument may be denounced by any of the Parties and the denunciation shall take effect one hundred and eighty (180) days after its submission to SG-SICA, without prejudice to the parties being able to agree on a different term.
- 2. The Treaty shall remain in force between the other Parties, as long as they remain attached to it, at least two of them.

### **11.06. Deposit**

SG-SICA shall be the depositary of this Treaty, of which it shall send certified copies to the Foreign Ministries of each Contracting State, the Ministry of Foreign Trade of Costa Rica and the Secretariat of Central American Economic Integration (SIECA). It shall also notify them immediately of the deposit of each of the instruments of ratification. Upon the entry into force of this Agreement, SG-SICA shall proceed to send

A certified copy thereof to the General Secretariat of the United Nations for the purpose of the registration referred to in Article 102 of the Charter of that Organization.

### **11.07. Annexes, Appendices and Footnotes**

The annexes, appendices and footnotes to this Treaty form an integral part of it.

### **11.08. Replacement**

This Treaty replaces in its entirety the Treaty on Investment and Trade in Services between the Republics of El Salvador and Guatemala, signed in Guatemala City, Republic of Guatemala, on January 13, 2000.

## **Annex I. Non-conforming Measures**

### **Explanatory Note**

1. A Party's Schedule to this Annex sets out, in accordance with Articles 3.09 (Reservations and Exceptions) and 4.07 (Reservations and Exceptions), a Party's existing measures that are not subject to some or all of the obligations imposed by:

- (a) Articles 3.04 (National Treatment); 4.04 (National Treatment);
- b) Articles 3.05 (Most-Favored-Nation Treatment); or 4.03 (Most-Favored-Nation Treatment);
- c) Article 3.07 (Performance Requirements);
- d) Article 3.08 (Senior Corporate Management and Boards of Directors);
- e) Article 4.

2. Each Schedule entry sets out the following elements:

- a) Sector refers to the sector for which the entry has been made;
- b) Obligations Affected specifies the obligation or obligations referred to in paragraph 1 that, under Articles 3.09 (Reservations and Exceptions) and 4.07 (Reservations and Exceptions), do not apply to the measure or measures listed;
- c) Measures identifies the laws, regulations or other measures in respect of which the entry has been made. A measure cited in the Measures element:
  - (i) means the measure as modified, continued or renewed, as of the date of entry into force of this Agreement, and
  - (ii) includes any measure subordinated to, adopted or maintained under the authority of, and consistent with, that measure; and
- (d) Description sets out the liberalization commitments, if any, as of the date of entry into force of this Agreement and the remaining non-conforming aspects of the existing measures in respect of which the record has been made.

3 In interpreting a schedule to the List, all elements of the schedule shall be considered. A fiche shall be interpreted in the light of the relevant obligations of the Chapters in respect of which the fiche has been made. To the extent that:

a) the Measures element is qualified by a commitment to liberalize the Description element, the Measures element is qualified, it shall prevail over any other element; and

b) the Measures element is not qualified, the Measures element shall prevail over any other element, except where any discrepancy between the Measures element and the other elements considered in their totality is so substantial and material that it would be unreasonable to conclude that the Measures element would not be considered to be a commitment to liberalize the Description element.

4. Pursuant to Articles 3.09 (Reservations and Exceptions) and 4.07 (Reservations and Exceptions), the Articles of this Agreement specified in the Affected Obligations element of a schedule do not apply to the law, regulation or other measure identified in the Measures element of that schedule.

5. Where a Party maintains a measure that requires a service supplier to be a national, permanent resident or resident in its territory as a condition for the supply of a service in its territory, a Schedule entry made for that measure in connection with Articles 4.03 (Most-favored-nation treatment), 4.04 (National treatment) or 4.05 (Local presence) shall operate as a Schedule entry in relation to Articles 3.04 (National treatment), 3.05 (Most-favored-nation treatment) or 3.07 (Performance requirements) with respect to such measure.

6. For greater certainty, Article 4.06 (Market Access) refers to non-discriminatory measures.

7. For the purposes of this Agreement, the Parties agree on the following understandings:

- a) Articles 7 and 10 of the Labor Code of El Salvador, Article 11 of the Labor Code of Honduras, and Article 14 of the Labor



Code of Nicaragua are not inconsistent with Chapter 4 (Cross-Border Trade in Services) of the Agreement.

b) With respect to Chapter 3 (Investment) and for greater certainty, nothing in this Agreement shall be construed to require a Party to privatize public services provided in the exercise of governmental authority.

c) Nothing in Chapter 3 (Investment) and Chapter 4 (Cross-Border Trade in Services) prevents the Parties from adopting, maintaining or applying any measure that is consistent with the Agreement relating to electronic betting and other gambling activities within their respective national territories.

d) The extraction of natural resources (extraction of minerals and hydrocarbons), the generation of electricity, the refining of crude oil and petroleum products, hunting and fishing shall not be considered services for the purposes of this Agreement.

e) Nothing in Chapter 3 (Investment) and Chapter 4 (Cross-Border Trade in Services) precludes the Parties from adopting, maintaining or applying any measure that is consistent with the Agreement relating to the following activities:

i. the use of wildlife genetic material (flora and fauna), wildlife products and wildlife by-products;

ii. the exploration or use of forestry, hydrological, soil, archaeological or zoological resources; and

iii. urban and land use planning.

f) A non-discriminatory indefinite moratorium on open-pit mining activities declared in the territory of Costa Rica shall not be considered a non-conforming measure subject to the disciplines of Chapter 3 (Investment). Chapter 3 (Investment) and Chapter 4 (Cross-Border Trade in Services).

g) The requirement under Honduran law that no more than five percent of the nurses employed in a hospital facility may be foreign nationals is not inconsistent with the market access obligation (Article 4.06) of Chapter 4 (Cross-Border Trade in Services).

8. For greater certainty, nothing in this Annex affects the commitments assumed by the Parties within the framework of the Central American Economic Integration Subsystem.

## **Annex I. Schedule of Costa Rica**

Sector: Irrigation and Drainage Services

Obligations Concerned: Market Access (Article 4.06)

Measures: Law No. 7593 of August 9, 1996 - Law of the Public Services Regulatory Authority - Articles 5, 9 and 13

Description: Cross Border Trade in Services

Costa Rica reserves the right to limit the number of concessions for the supply of irrigation services based on the demand for such services. Priority will be given to concessionaires that are already providing the service.

Sector: Solid Waste Treatment Services

Obligations Concerned: Market Access (Article 4.06)

Measures: Law No. 7593 of August 9, 1996 - Ley de la Autoridad Reguladora de los Servicios Públicos - Articles 5, 9 and 13

Description: Cross Border Trade in Services

Costa Rica reserves the right to limit the number of concessions for the supply of solid waste treatment services based on the demand for such services. Priority will be given to concessionaires that are already supplying the service.

Sector: Maritime Services and Specialized Air Services

Obligations Concerned: Market Access (Article 4.06)

Measures: Law No. 7593 of August 9, 1996 - Law of the Public Services Regulatory Authority - Articles 5, 9 and 13

Description: Cross-Border Trade in Services

Costa Rica reserves the right to limit the number of concessions for the supply of specialized maritime and air services in domestic ports based on the demand for such services. Priority will be given to concessionaires that are already supplying the service.

Sector: Professional Services

Obligations Concerned: Most-favored-nation treatment (Article 4.03) National treatment (Article 4.04) Local presence (Article 4.05)

Measures: Law No. 7221 of April 6, 1991 - Ley Organica del Colegio de Ingenieros Agrónomos - Articles 5, 6, 8, 10, 15, 16, 18, 19, 20, 23, 24 and 25

Executive Decree No. 22688-MAG-MIRENEM of November 22, 1993 - Reglamento General de la Ley Organica del Colegio de Ingenieros Agrónomos de Costa Rica - Articles 6, 7 and 9

Executive Decree No. 29410 of March 2, 2001 - Regulations of the Registry of Experts-Assessors of the Colegio de Ingenieros Agrónomos - Articles 6, 20 and 22

Law No. 5230 of July 2, 1973 - Organic Law of the College of Geologists of Costa Rica - Articles 3 and 9

Executive Decree No. 6419-MEIC of October 18, 1976 - Regulations of the College of Geologists of Costa Rica - Articles 4, 5 and 37

Law No. 5142 of November 30, 1972 - Organic Law of the College of Pharmacists of Costa Rica - Articles 2, 9 and 10

Executive Decree No. 3503-S of February 6, 1974 - General Organic Regulations or Internal Regulations of the College of Pharmacists of Costa Rica - Articles 2 and 6

Law No. 5784 of August 19, 1975 - Organic Law of the College of Dental Surgeons of Costa Rica - Articles 2, 6, 9, 10, 14 and 15

Law No. 4925 of December 17, 1971 - Comprehensive Reform to the Organic Law of the Federated College of Engineers and Architects - Articles 5, 9, 11, 13, 14 and 52

Executive Decree No. 3414-T of December 3, 1973- General Internal Regulations of the Federated College of Engineers and Architects of Costa Rica - Articles 1, 3, 7, 9 and 54

Special Regulations of Incorporation to the Federated College of Engineers and Architects of Costa Rica, approved in Session 4-82-A.E.R., of 6 December 1982 - Articles 7 and 8

Special Regulations to Determine the list of Professionals for the Effects of Temporary Membership or Incorporation of Foreigners to the Colegio Federado de Ingenieros y de Arquitectos de Costa Rica, approved in Session 45-82-GE of December, 1982 - Articles 1, 2, 3, 4, 5, 6, 7 and 8

Law No. 1038 of August 19, 1947 - Law of Creation of the College of Public Accountants - Articles 3, 4, 12 and 15

Law No. 3455 of November 14, 1964 - Organic Law of the College of Veterinarians - Articles 2, 4, 5, 7 and 27

Executive Decree No. 19184-MAG of July 10, 1989 - Regulations to the Organic Law of the College of Veterinarians - Articles 6, 7, 10, 11, 19 and 24

Law No. 2343 of May 4, 1959 - Organic Law of the College of Nurses of Costa Rica - Articles 2, 22, 23, 24 and 28

Executive Decree No. 11 of August 1, 1961 - Articles 2, 22, 23, 24 and 28

Executive Decree No. 11 of August 1, 1961 - Articles 2, 22, 23, 23, 24 and 27 11 of August 10, 1961

Regulation of Law No. 2343 of May 4, 1959 that Creates the College of Nurses of Costa Rica - Articles 9, 10, 53, 54 and 67

Law No. 7764 of April 17, 1998 - Notarial Code - Articles 3 and 10

Law No. 1269 of March 2, 1951 - Organic Law of the College of Private Accountants of Costa Rica - Articles 2 and 4

Law No. 6038 of January 13, 1977 - Organic Law of the College of Chemists and Chemical Engineers of Costa Rica - Articles 1, 2, 3, 8, 9 and 83

Law No. 3019 of August 9, 1962 - Organic Law of the College of Physicians and Surgeons - Articles 4, 5 and 7

Executive Decree No. 23110-S of March 22, 1991 - Regulations to the Organizational Law of the College of Physicians and Surgeons - Article 10

Executive Decree No. 2613-SPSS of March 3, 1991. 2613-SPSS of November 3, 1972 - General Regulations to Authorize the

Practice of Professionals of Dependent Branches of the Medical Sciences and Technicians in Medical and Surgical Matters - Articles 1 and 4

Law No. 3838 of December 19, 1966 - Organizational Law of the College of Optometrists of Costa Rica - Articles 6 and 7

Law No. 4420 of September 18, 1969 - Organizational Law of the College of Journalists of Costa Rica - Articles 2, 24, 25 and 27

Executive Decree No. 14931 of October 20, 1983 - Amendment to the Regulations of the Organizational Law of the College of Journalists of Costa Rica - Articles 5, 6 and 26

Law No. 7106 of November 4, 1988 - Organizational Law of the College of Professionals in Political Sciences - Articles 6, 26 and 29

Executive Decree No. 19026-P of May 5, 1983 - Reform to the Regulations of the Organizational Law of the College of Journalists of Costa Rica - Articles 5, 6 and 26

Law No. 7106 of November 4, 1988 - Organizational Law of the College of Professionals in Political Sciences - Articles 6, 26 and 29

Executive Decree No. 19026-P of May 5, 1983 - Reform to the Regulations of the Organizational Law of the College of Professionals in Political Sciences - Articles 6, 26 and 26 19026-P of May 31, 1989

Regulations to the Organic Law of the College of Professionals in Political Sciences and International Relations - Articles 1, 10, 12, 19, 21 and 22

Law No. 8356 of June 12, 2002 - Reform of the Organic Law of the College of Professionals in Political Sciences - Article 1

Law No. 4288 of December 12, 1968 - Organic Law of the College of Biologists - Articles 6 and 7

Executive Decree No. 39 of March 6, 1970 - Regulations of the Organic Law of the College of Biologists of Costa Rica - Articles 10, 11, 16, 17, 18 and 19

Regulations to the Organic Law of the College of Librarians of Costa Rica, approved at the Ordinary General Assembly of October 2, 1991 - Articles 12 and 17

Law No. 7537 of August 22, 1995 - Organic Law of the College of Professionals in Informatics and Computer Science, Articles 6 and 8

Law No. 8142 of October 17, 2001 - Law of Official Translations and Interpretations - Article 6

Executive Decree No. 30167-RE of January 25, 2002 - Regulations to the Law of Official Translations and Interpretations - Article 10

Law No. 7105 of October 31, 1988 - Organic Law of the College of Licenciates in Economic Sciences of Costa Rica - Articles 4, 6, 15, 19 and 20

Executive Decree No. 20014-MEIC of September 19, 1990 - Reglamento General de Profesionales en Ciencias Económicas de Costa Rica - Articles 10, 14 and 17

Law No. 7503 of May 3, 1995 - Ley Organica del Colegio de Ffsicos - Articles 6 and 10

Executive Decree No. 28035-MINAE-MICIT of April 14, 1999 - Regulations to the Organic Law of the College of Physicists - Articles 6, 7, 10, 11, 18 and 21

Law No. 6144 of November 28, 1977 - Organic Law of the Professional College of Psychologists of Costa Rica - Articles 4, 5 and 6

General Regulations of the Professional College of Psychologists of Costa Rica, approved at Session No. 3 of the Ordinary General Assembly of March 9, 1979 - Articles 9, 10 and 11

Executive Decree No. 28595-S of March 23, 2000 - Regulation of the Organic Law of the College of Chiropractic Professionals - Article 15.

Description: Investment and Cross Border Trade of Services

In order to join the Professional Association of Public Accountants, Pharmacists, Geologists, Physicians and Surgeons,

Veterinarians, Attorneys (i.e., Notaries), Dental Surgeons, Optometrists, Journalists, Nurses, Medical and Surgical Technicians and branches of the Medical Sciences, all foreign professionals must demonstrate that in their country of origin where they are authorized to practice, Costa Rican nationals can practice their profession under similar circumstances. In order to join the Professional Association of Public Accountants, Pharmacists, Geologists, Agricultural Engineers (Agricultural or Forestry Appraisers), Physicians and Surgeons, Veterinarians, Dental Surgeons, Journalists, Medical and Surgical Technicians and branches of the Medical Sciences, Computer and Informatics, Nurses and Translators and Official Interpreters, the foreign professionals must have the migratory status of residents in Costa Rica at the moment of the incorporation request, as well as a certain minimum number of years of residence. The number of years varies from one professional association to another, but is usually in the range of two to five years. Only Costa Rican professionals duly incorporated to the College of Agricultural Engineers may render services to agricultural science consulting firms operating in Costa Rica, in order to comply with the legal requirement of 50 percent of the total professional consulting time. The consulting or advisory work in the field of agricultural sciences, which is carried out in Costa Rica under the auspices of foreign governments or international institutions, will be conducted jointly by Costa Rican nationals incorporated in the College together with foreigners. Foreign professionals specialized in political science and international relations may only be hired by public or private entities, when they are active members of the Professional Association and have been declared lack of Costa Rican professionals. For greater certainty, subject to the conditions and terms of the applicable legislation, the following Professional Associations may grant temporary licenses for the temporary exercise of the profession in Costa Rica: Biologists, Economists and Social Scientists, Specialists in Political Sciences and International Relations, Dental Surgeons, Pharmacists, Physicists, Computer and Informatics Professionals, Agricultural Engineers, Engineers and Architects, Doctors and Surgeons, Veterinarians, Journalists, Psychologists, Chemists and Chemical Engineers, and Chiropractors. For greater certainty, none of the measures listed in this tab of the Annex restrict companies in Costa Rica from otherwise employing foreign professionals in accordance with Costa Rican law to execute contracts.

Sector: Land Maritime Zone

Obligations Concerned: National Treatment (Articles 3.04 and 4.04) Local Presence (Article 4.05) Market Access (Article 4.06)

Measures: Law No. 6043 of March 2, 1977 - Law on the Land Maritime Zone - Articles 9, 10, 11 and 12 and Chapters 3 and 6

Description: Investment and Cross-Border Trade in Services

A concession is required to carry out any type of development or activity in the maritime-terrestrial zone. (1) Such concession shall not be granted to or held by: a) foreigners who have not resided in the country for at least five years; b) companies with bearer shares; c) companies domiciled abroad; d) companies incorporated in the country only by foreigners; or e) companies whose shares or capital quotas are more than 50 percent owned by foreigners. In the maritime-terrestrial zone, no concession shall be granted within the first 50 meters counted from the high tide line or in the area between the high tide line and the low tide line.

(1) The terrestrial maritime zone is the strip of 200 meters wide along the Atlantic and Pacific coasts of the Republic, measured horizontally from the ordinary high tide line. The maritime-terrestrial zone includes all the islands within the territorial sea of Costa Rica.

Sector: Land Transportation Services - Passenger Transportation

Obligations Concerned: National Treatment (Articles 3.04 and 4.04) Most-Favored-Nation Treatment (Articles 3.05 and 4.03) Market Access (Article 4.06). 06)

Measures: Executive Decree No. 26 of November 10, 1965 - International Transportation of Persons Regulations - Articles 1, 3, 4, 5, 9, 15 and 16 as amended by Executive Decree No. 20785-MOPT of October 4, 1991 - Article 1

Law No. 3503 of May 10, 1965. 3503 of May 10, 1965 - Regulatory Law of the Paid Transportation of Persons in Motor Vehicles - Articles 1, 3, 4, 6, 10, 11 and 25

Executive Decree No. 31180-MOPT of April 24, 2003 - Regulates the Public Service of Paid Transportation of Persons in Taxi Modality - Article 1

Law No. 7969 of December 22, 1999 - Regulatory Law of the Public Service of Paid Transportation of Persons in Vehicles in the Modality of Taxis - Articles 1, 2, 3, 29, 30 and 33

Executive Decree No. 5743-T of February 12, 1976 - Regulation to the Regulatory Law of Paid Transportation of Persons in Taxi Vehicles - Articles 1, 2, 5 and 14.

Executive Decree No. 28913-MOPT of September 13, 2000 - Regulation of the First Special Abbreviated Procedure for the

Paid Transportation of Persons in Taxi Vehicles - Articles 1, 3 and 16

Law No. 5066 of August 30, 1972 - General Law of Railroads - Articles 1, 4, 5 and 41

Executive Decree No. 28337-MOPT of December 16, 1999 - Regulation on Policies and Strategies for the Modernization of Paid Collective Transportation of Persons by Urban Buses for the Metropolitan Area of San Jose and Surrounding Areas that Directly or Indirectly Affects it - Article 1

Executive Decree No. 15203-MOPT of February 22, 1984 - Regulation for the Exploitation of Special Services of Paid Collective Transportation of Persons - Articles 2, 3, 4, and 5.

Executive Decree No. 15203-MOPT of February 22, 1984 - Regulation for the Exploitation of Special Services of Paid Collective

Law No. 7593 of August 9, 1996 - Law of the Public Services Regulatory Authority - Articles 5, 9, 10 and 13

Description: Investment and Cross Border Trade in Services

Costa Rica reserves the right to limit the number of concessions to operate domestic lines of routes of remunerated transportation of persons in motor vehicles (including special services of transportation of persons as defined in Articles 2 and 3 of Executive Decree No. 15203-MOPT of February 22, 1984 - Regulation for the Exploitation of Special Services of Remunerated Motor Transport of Persons). Said concessions must be granted through bidding, and the operation of a line will only be tendered when the Ministry of Public Works and Transportation has established the need to provide the service, according to the respective technical studies. When there are multiple offers, including one from a Costa Rican supplier that satisfies all the requirements to the same extent, the Costa Rican offer will be preferred over the foreign one, whether it is a natural person or a company. A permit to operate an international remunerated transportation service of persons shall be granted only to companies incorporated under Costa Rican law or those whose capital is at least 60 percent of which is made up of contributions from Central American nationals. In addition to the above described restriction, in the granting of permits to perform international remunerated transportation services of persons, the principle of reciprocity shall be applied. A permit shall be required to provide remunerated transportation services of passengers by land. New concessions may be granted if justified by the demand for the service. Priority will be given to concessionaires already providing the service. Costa Rica reserves the right to limit the number of permits or concessions to provide the paid domestic ground passenger transportation service, based on the demand for the service. The Ministry of Public Works and Transportation reserves the right to annually fix the number of concessions to be granted in each district, canton and province for cab services. Only one cab concession may be granted to each natural person and each concession grants the right to operate only one vehicle. Cab concession bids are awarded on the basis of a point system, which gives an advantage to existing providers. Each concession to provide regular public services of transportation of persons for remuneration in motor vehicles, excluding cabs, may only be awarded to one person, unless an economic needs test evidences the need for additional providers. Additionally, a natural person may not own more than two companies nor may he/she be a majority shareholder in more than three companies operating different routes. Permits to provide non-tourist bus transportation services within the Greater Metropolitan Area of the Central Valley of Costa Rica shall be granted only once it has been demonstrated that the regular public bus service cannot satisfy the demand. Costa Rica reserves the right to maintain a monopoly on railroad transportation. However, the State may grant concessions to private individuals. Concessions may be granted if justified by the demand for the service. Priority will be given to concessionaires who are already providing the service.

Sector: Land Transportation Services - Freight Transportation

Obligations Concerned: National Treatment (Articles 3.04 and 4.04) Most-Favored-Nation Treatment (Articles 3.05 and 4.03) Senior Management and Boards of Directors (Article 3.08) Market Access (Article 4.06)

Measures: Executive Decree No. 31363 of June 2, 2003.

Executive Decree No. 31363 of June 2, 2003 - Road Traffic Regulations based on the Weight and Dimensions of Cargo Vehicles - Article 69

Executive Decree No. 15624-MOPT of August 28, 1984 - Regulation of Local Automotive Cargo Transportation - Articles 8, 9, 10 and 12

Law No. 7593 of August 9, 1996 - Law of the Public Services Regulatory Authority - Articles 5, 9 and 13

Description: Investment and Cross-Border Trade in Services

Only Costa Rican nationals or companies may supply motor freight transportation services between two points within the

territory of Costa Rica. Such enterprise must meet the following requirements: a) at least 51 percent of its capital must belong to Costa Rican nationals; and b) the effective control and management of the enterprise must also be in the hands of Costa Rican nationals. No motor vehicle, trailer or semi-trailer with foreign plates or registration may transport goods within the territory of Costa Rica. Exceptions to the above prohibition are vehicles, trailers or semi-trailers registered in any of the Central American countries. Foreign international multimodal cargo transportation companies are required to contract with companies incorporated under Costa Rican law to transport containers and semi-trailers within Costa Rica. Costa Rica reserves the right to grant concessions for the provision of railroad cargo transportation services based on the demand for such service. Priority will be given to the concessionaires that are already providing the service.

Sector: Waterborne Transport Services Obligations Concerned: National Treatment (Articles 3.04 and 4.04) Local Presence (Article 4.05) Market Access (Article 4.06)

Measures: Law No. 7593 of August 9, 1996 - Ley de la Autoridad Reguladora de los Servicios Públicos - Articles 5, 9, and 13

Law No. 104 of June 6, 1853 - Code of Commerce of 1853 - Book III of Maritime Commerce - Articles 537 and 580

Law No. 12 of October 22, 1941 - Law on the Flagging of Ships - Articles 41 and 43

Law No. 2220 of June 20, 1958 - Cabotage Service Law of the Republic - Articles 5, 7, 8, 9, 11 and 12

Executive Decree No. 66 of November 4, 1960 - Regulations to the Cabotage Service Law of the Republic - Articles 10, 11, 12, 15 and 16

Executive Decree No. 12568-T-S-H of April 30, 1981 - Regulation of the Costa Rican Naval Registry - Articles 8, 10, 11, 12 and 13

Executive Decree No. 23178-J-MOPT of April 18, 1994 - Transfer of the National Vessel Registry to the Public Registry of Movable Property - Article 5

Description: Investment and Cross-Border Trade in Services

Costa Rica reserves the right to limit the number of concessions for water transportation services based on the demand for such service. Priority will be given to concessionaires who are already providing the service. a concession to provide cabotage service will only be granted to Costa Rican nationals or to companies incorporated under the laws of Costa Rica, of whose capital 60 percent of the shares belong to Costa Rican nationals. only Costa Rican nationals, Costa Rican public entities, companies incorporated and domiciled in Costa Rica, and representatives of Costa Rican companies may register vessels in Costa Rica. only Costa Rican nationals, Costa Rican public entities, companies incorporated and domiciled in Costa Rica and representatives of Costa Rican companies may register vessels in Costa Rica. Costa Rica and the representatives of shipping companies. Exceptions to this rule are foreigners or foreign companies that wish to register vessels under 50 tons for non-commercial use. Any natural person or company domiciled abroad that owns one or more foreign registered vessels located in Costa Rica, must appoint and maintain an agent or legal representative in Costa Rica, to act as liaison with the official authorities in all matters related to the vessel. Commercial and tourist cabotage from Costa Rican port to Costa Rican port shall be done exclusively in Costa Rican registered vessels. Foreigners who wish to be captains of a Costa Rican registered and flagged vessel must provide a guarantee equivalent to at least half of the value of the vessel under their command. At least ten percent of the crew on Costa Rican-registered international traffic vessels docking in Costa Rican ports shall be Costa Rican nationals, provided that such trained personnel are available domestically.

Sector: Specialized Air Services

Obligations Concerned: Most-favored-nation treatment (Article 4.03) National treatment (Article 4.04) Local preference (Article 4.05)

Measures: Law No. 5150 of May 14, 1973 - General Civil Aviation Law - Articles 143, 156, paragraphs 3 and 4, and 179

Executive Decree No. 3326-T of October 25, 1973. 4637-T of February 18, 1975 - Regulation of Licenses for Aeronautical Technical Personnel - Article 23

Executive Decree No. 31520-MS-MAG-MINAE-MOPT-MGPSP of October 16, 2003 - Regulation for Agricultural Aviation Activities - Articles 10, 11, 13, 24 and 41

Executive Decree No. 28262-MOPT of November 1, 1999 - Regulation of Air Operator Certificates (COA), Operating Certificates and Operating Authorizations (RAC 119) - Sections 119.33 and 119.47

Description: Cross-Border Trade in Services

Costa Rican companies interested in obtaining an operating certificate for any aeronautical services, including specialized air services, must prove that effective control and management of the company, and at least 51 percent of the capital, is held by Costa Rican nationals. Certificates for the supply of airworthiness services will be issued to foreign companies incorporated under foreign legislation, based on the principle of reciprocity, and any holder of an operating certificate must maintain an operating and maintenance base in Costa Rica.

Sector: Air Transport Services

Obligations Concerned: National Treatment (Article 3.04) Most-Favored-Nation Treatment (Article 3.05) Senior Management and Boards of Directors (Article 3.08)

Measures: Law No. 5150 of May 14, 1973 - General Civil Aviation Law - Articles 36, 37, 42, 149, 156 and 179

Executive Decree No. 3326-T of October 25, 1973 - Articles 36, 37, 42, 149, 156 and 179. 3326-T of October 25, 1973 - Regulation for the Granting of Operating Certificates - Articles 5 and 6

Executive Decree No. 4440-T of January 3, 1975 - Regulation for the Operation of the Costa Rican Aeronautical Registry - Articles 20 and 38

Executive Decree No. 4637-T of February 18, 1975 - Regulation of Licenses for Aeronautical Technical Personnel - Article 23

Description: Investment

Only Costa Rican nationals or Costa Rican companies may supply local air transportation services, whether scheduled or non-scheduled. In order to supply these services, Costa Rican companies must meet the following requirements: a) at least 51 percent of their capital must be owned by Costa Rican nationals; and b) effective control and management of the company must be in the hands of Costa Rican nationals. Foreigners may not be members of the Board of Directors of such companies. Only Costa Rican nationals or companies may register in the Costa Rican Aeronautical Registry aircraft used for remunerated air activities. Foreigners with legal residence in the country may also register aircraft used exclusively for non-commercial purposes. In the absence of agreements or conventions, certificates for the provision of international air transportation will be issued on the basis of the principle of reciprocity.

Sector: Tourist Guides

Obligations Concerned: National Treatment (Article 4.04)

Measures: Executive Decree No. 31030-MEIC-TUR of January 17, 2003 - Reglamento de las Guías de Turismo - Artículo 11

Description: Cross Border Trade of Services

Only Costa Rican nationals are eligible for tourist guide licenses.

Sector: Travel and Tourism Agencies

Obligations Concerned: Market Access (Article 4.06)

Measures: Law No. 5339 of August 24, 1973 - Law Regulating Travel Agencies - Article 8

Executive Decree No. 24863-H-TUR of December 5, 1995 - Regulation of the Law on Incentives for Tourism Development - Article 16

Description: Cross Border Trade in Services

Costa Rica reserves the right to limit the number of travel agencies authorized to operate in Costa Rica based on the demand for that service.

Sector: Transportation Services - Customs Agents - Customs Agent Assistants - Customs Carriers

Obligations Concerned: National Treatment (Article 4.04) Local Presence (Article 4.05)

Measures: Law No. 7557 of October 20, 1995 - General Customs Law and its amendments - Articles 28, 29, 33, 35, 40, 41, 44, 46 and 49

Executive Decree No. 25270-H of June 14, 1996 - Regulations to the General Customs Law - Articles 77, 78 and 113

Description: Cross Border Trade in Services

Only persons or companies that have a legal representative and head office in Costa Rica may act as customs carrier, international freight forwarder, customs warehouseman or other auxiliary of the public customs function. Only Costa Rican nationals may operate as customs agents.

Sector: Telecommunications-Related Services - Radio and Television

Obligations Concerned: National treatment (Articles 3.04 and 4.04) Most-favored-nation treatment (Articles 3.05 and 4.03) Senior management and boards of directors (Article 3.08) Market access (Article 4.06)

Measures: Political Constitution of the Republic of Costa Rica - Article 121, paragraph 14

Law No. 1758 of June 19, 1951. 1758 of June 19, 1954 - Radio and Television Law - Articles 1, 2, 3 and 7

Executive Decree No. 21 of September 29, 1958 - Regulations for the Operation of Television Broadcasters - Article 4

Executive Decree No. 63 of December 11, 1956 - Regulations for Wireless Stations - Articles 7, 13, 15 and 30

Description: Investment and Cross-Border Trade in Services

In Costa Rica, wireless services may not definitively leave the domain of the State and may only be supplied by the public administration or by private parties, in accordance with the law or by means of special concession granted for a limited time and under the conditions and stipulations established by the Legislative Assembly. Only Costa Rican nationals or companies whose capital is owned in no less than 65 percent by Costa Rican nationals, may establish or manage a company supplying wireless services. This restriction does not apply to the establishment and operation of amateur radio stations, but no rights will be granted to a foreigner with residence in Costa Rica, when the country of origin of that foreigner does not grant the same right to Costa Rican nationals. Only Costa Rican nationals or companies with nominative shares and owned by Costa Rican nationals may obtain a license to operate Ultra High Frequency (UHF) radio broadcasting services. Only Costa Rican nationals or companies whose capital is not less than 65 percent owned by Costa Rican nationals may obtain a license or allotment of a free-to-air television channel for Costa Rican-originated signals. Only Costa Rican nationals or companies whose capital is not less than 65 percent owned by Costa Rican nationals may obtain a license to operate radio stations; amateur radio; radiotelevision; and maritime, aeronautical, meteorological and private broadcasting stations. The directors or administrators of companies that provide radio and television services must be Costa Rican by birth or have been naturalized for more than ten years. The right to establish radio stations in Costa Rica for the transmission and reception of official messages is permanently reserved to the State and is not subject to concession.

Sector: Retail and Wholesale Distribution - Crude Oil and its Derivatives

Obligations Concerned: Access to markets (Article 4.06)

Measures: Law No. 7356 of August 24, 1993 - Law of the State Monopoly of Hydrocarbons Administered by Recope "Establishes a Monopoly in favor of the State for the import and export of crude oil and its derivatives" Article 1

Law No. 7593 of August 9, 1996 - Law of the Public Services Regulatory Authority - Articles 5, 9 and 13

Description: Cross Border Trade of Services

The wholesale distribution of crude oil and its derivatives - including gasoline, asphalt and naphtha - is subject to the monopoly of the State. Costa Rica reserves the right to limit the number of concessions for the retail distribution of crude oil and its derivatives - including gasoline, asphalt and naphtha - based on the demand for the service. Priority will be given to concessionaires that are already supplying the service.

Sector: Mining-Related Services - Hydrocarbon Exploration

Obligations Concerned: Local presence (Article 4.05)

Measures: Political Constitution of the Republic of Costa Rica - Article 121

Law No. 7399 of May 3, 1994 - Hydrocarbons Law - Articles 1 and 22

Executive Decree No. 24735-MIRENEM of September 29, 1995 - Regulations to the Hydrocarbons Law - Article 17

Executive Decree No. 28148-MINAE of August 30, 1999 - Regulations for the Cessation of Rights and Obligations of Hydrocarbon Exploration and Exploitation Contracts - Article 3

Description: Cross Border Trade of Services



If the recipient of a concession for hydrocarbon exploration or other services related to hydrocarbon mining is organized under the legislation of a foreign country, it must have a branch office and a legal representative in Costa Rica.

Sector: Mining and Mining-Related Services - Minerals other than Hydrocarbons

Obligations Concerned: National Treatment (Articles 3.04 and 4.04) Local Presence (Article 4.05) Market Access (Article 4.06). 06)

Measures: Political Constitution of the Republic of Costa Rica - Article 121, paragraph 14

Law No. 6797 of October 4, 1982 - Mining Code - Articles 1, 4, 6, 7, 9, 11, 66, 67, 69, 70, 71 and 74

Description: Investment and Cross Border Trade in Services

Exploration and other services related to the mining of any radioactive minerals in Costa Rica may be provided only by the State or by private parties under the modality of a concession, in accordance with the Political Constitution. Concessions for mining or exploration of minerals other than hydrocarbons may not be granted to foreign governments or their representatives. Concessionaires that are companies organized in accordance with foreign legislation or natural persons that are concessionaires without residence in Costa Rica must appoint a legal representative with powers of attorney general without limit of amount to acquire rights and obligations on behalf of their represented party -whether natural person or company- and must also maintain an office in Costa Rica. The banks of the National Banking System will not grant loans in an amount greater than ten percent of the total investment to companies with more than 50 percent of foreign capital. Only individuals are authorized to constitute mining cooperatives and 75 percent of the members must be Costa Rican nationals.

Sector: Scientific and Research Services

Obligations Concerned: Local Presence (Article 4.05)

Measures: Law No. 7788 of April 30, 1998 - Biodiversity Law - Article 63.

Description: Cross-Border Trade in Services

Foreign nationals or companies domiciled abroad that provide scientific research and bioprospecting (2) services, with respect to biodiversity (3) in Costa Rica, must designate a legal representative with residence in Costa Rica.

(2) Bioprospecting includes the systematic search, classification and investigation, for commercial purposes, of new sources of chemical compounds, genes, proteins, microorganisms or other products with real or potential economic value found in biodiversity.

(3) Biodiversity includes the variability of living organisms from all sources found on land, in the air, in aquatic or marine ecosystems, or in any other ecological ecosystem, as well as the diversity among species and between species and the eco-systems of which they are part. Biodiversity also includes intangible elements such as: knowledge, innovation and traditional practices - individual or collective - with actual or potential economic value, associated with genetic or biochemical resources, whether or not protected by intellectual property rights or sui generis registration systems.

Sector: Free Zones

Obligations Concerned: Performance requirements (Article 3.07)

Measures: Law No. 7210 of November 23, 1990 - Law of Free Zones Regime - Article 22

Executive Decree No. 29606-H-COMEX of June 18, 2001 - Regulation to the Law of Free Zones Regime - Articles 55 and 57

Description: Investment

An enterprise under the Free Zone Regime in Costa Rica may not introduce more than 25 percent of its total sales of products nor more than 50 percent of its total sales of services into the Costa Rican customs territory. A company under the Free Zone Regime in Costa Rica, which only repackages or redistributes goods, but does not alter them, may not introduce such products into the Costa Rican customs territory.

Sector: Agriculture and Forestry Related Services

Obligations Concerned: National Treatment (Article 4.04)

Measures: Law No. 7317 of October 30, 1992 - Wildlife Conservation Law - Articles 28, 29, 31, 38, 39, 64 and 66

Executive Decree No. 26435-MINAE of October 1, 1997 - Regulations to the Wildlife Conservation Law - Article 32

Description: Transboundary Trade in Services

A license for the scientific or cultural collection of species shall be issued for a maximum period of one year to nationals or residents and six months or less for all other foreigners. Nationals and residents shall pay a lower fee than non-resident foreigners to obtain the license described above.

Sector: Fishing and Fishing-Related Services

Obligations Concerned: National Treatment (Article 3.04) Performance Requirements (Article 3.07)

Measures: Political Constitution of the Republic of Costa Rica - Article 6

Law 190 of September 28, 1948 - Law on Maritime Fishing and Hunting - Article 7

Law No. 6267 of August 29, 1978 - Reform to the Law of Fishing and Foreign Flag Vessels in Patrimonial Sea - Articles 3, 5 and 14

Executive Decree No. 23943-MOPT-MAG. 23943-MOPT-MAG of January 5, 1995 - Regulatory Regulation of the Procedure for Granting Fishing Licenses to Foreign Vessels Desiring to Engage in Fishing Activities in Costa Rican Jurisdictional Waters - Article 6

Executive Decree No. 12737-A of June 23, 1995. 12737-A of June 23, 1981 - Reserves Exclusively Fishing for Commercial Purposes to Costa Ricans - Article 1

Executive Decree No. 17658-MAG of July 17, 1987- Classifies Permits for Shrimp Fishing in the Pacific Coast - Articles 1, 2 and 3.

Description: Investment

The State exercises complete and exclusive sovereignty over its territorial waters for a distance of 12 miles from the low sea line along its coasts, its continental shelf and its insular basin in accordance with the principles of international law. It also exercises a special jurisdiction over the seas adjacent to its territory in an extension of two hundred miles from the same line, in order to protect, conserve and exploit with exclusivity all the resources and natural wealth existing in the waters, soil and subsoil of those zones, in accordance with those principles. fishing for shrimp and scale fish may only be permitted in Costa Rica with vessels built in the country and with national wood and labor. Foreign flag vessels may pay a lower fee and benefit from an automatic extension of their fishing permit if they supply their catch to national companies. National companies are those in which at least 51 percent of their capital is owned by Costa Rican nationals. Commercial fishing within 12 miles of Costa Rican territorial waters is exclusively reserved to Costa Rican nationals and to Costa Rican companies in which at least 51 percent of their capital is owned by Costa Rican nationals, who must carry out such activity with vessels flying the national flag. The capture of shrimp for commercial purposes in Costa Rican territorial waters of the Pacific Ocean is reserved to vessels of national flag and national registry belonging to Costa Rican nationals.

Sector: Electricity

Obligations Concerned: National Treatment (Articles 3.04 and 4.04) Local Presence (Article 4.05) Market Access (Article 4.06)

Measures: Political Constitution of the Republic of Costa Rica - Article 121

Law No. 7200 of April 28, 1990 - Law Authorizing Autonomous or Parallel Electricity Generation - Articles 1, 2, 3, 5, 7, and 26, modified by Law No. 7508 of May 9, 1995 - Law on Amendments to the Law Authorizing Autonomous or Parallel Generation - Articles 2 and 3

Law No. 7789 of April 30, 1998 - Transformation of Empresa de Servicios Publicos de Heredia - Article 15

Executive Decree No. 20346 MIRENEM of March 21, 1991 - Regulation to the Law that Authorizes Autonomous or Parallel Electricity Generation - Articles 4, 5, 6 and 8

Executive Decree No. 24866-MINAE of December 12, 1995 - Regulation to Chapter II of the Parallel Generation Law: Competition Regime - Article 34

Law No. 7593 of August 9, 1996 - Law of the Regulatory Authority of Public Utilities - Articles 5, 9 and 13

Law No. 8345 of February 20, 2003 - Law of Participation of Rural Electrification Cooperatives and Municipal Utilities Companies in National Development - Articles 1, 2, 3, 6, 7, 9, 11, 12 and 13

Description: Investment and Cross Border Trade in Services

Costa Rica reserves the right to grant by legislation concessions for the transmission, distribution and commercialization of electric energy on the basis of the demand for the service. For greater certainty, the following companies currently hold concessions to provide these services: Instituto Costarricense de Electricidad (ICE); Empresa de Servicios Publicos de Heredia; Junta Administrativa del Servicio Electrico Municipal de Cartago (JASEC); Compafifa Nacional de Fuerza y Luz; and cooperative associations, cooperative consortiums and municipal public service companies subject to the provisions of Law No. 8345. All of these companies may participate in strategic alliances with public or private companies to provide their services, subject to the provisions stipulated by law. In the case of the Empresa de Servicios Publicos de Heredia, not less than 51 percent of the capital of the private company must belong to Costa Rican nationals. Private individuals may invest in activities for the operation of power plants of limited capacity (4) that do not exceed 20. a) ICE may purchase electricity from companies in which not less than 35 percent of the capital is owned by Costa Rican nationals. b) Companies organized under foreign legislation and that enter into a power purchase agreement with ICE must establish a branch office in Costa Rica.

(4) For greater certainty, the EC may authorize the operation of a limited capacity power plant, provided that the energy generated by all private power plants in Costa Rica does not represent more than 15 percent of the total energy produced by all public and private power plants in the national electricity system. Also for greater certainty, any hydropower generated by waters in the public domain must be supplied only by the State or by private parties holding a concession, in accordance with the Constitution.

Sector: Higher Education Services

Obligations Concerned: National Treatment (Articles 3.04 and 4.04) Senior Management and Boards of Directors (Article 3.08)

Measures: Executive Decree No. 30431 of April 23, 2002 - Regulation of Para-University Higher Education - Articles 6 and 61, paragraph (d)

Description: Investment and Cross-Border Trade in Services

Not less than 85 percent of the teaching staff, administrative teaching staff, and senior management personnel of a private institute of higher education shall be Costa Rican nationals.

Sector: Human Health Professional Services - Physicians and Surgeons, Dental Surgeons, Microbiologists, Pharmacists, Nurses and Nutritionists

Obligations Concerned: National Treatment (Article 4.04)

Measures: Law No. 7559 of November 9, 1995 - Law on Compulsory Social Service for Health Science Professionals - Articles 2, 3, 5, 6 and 7

Executive Decree No. 25068 of March 21, 1996 - Regulation of Compulsory Social Service for Health Science Professionals - Articles 7, 13, 14, 17, 18, 21 and 22

Executive Decree No. 25841-S of February 5, 1997 - Amendment to the Regulation of Compulsory Social Service for Health Science Professionals - Article 1

Description: Cross Border Trade in Services

Physicians, dentists, dental surgeons, microbiologists, pharmacists, nurses and nutritionists shall perform the equivalent of one continuous year of paid compulsory social service. Compulsory social service places shall be allocated by lottery. When there are sufficient places for all applicants to perform compulsory social service, applicants who are Costa Rican nationals shall have priority over foreign applicants with respect to the allocation of a specific place. If the number of places offered for the lottery is less than the number of applicants, applicants who are Costa Rican nationals shall have priority to choose freely whether or not to participate in the lottery. This choice will be respected as long as the number of participants who do not wish to choose a place is equal to or less than the number of vacant places. When the number of applicants who are Costa Rican nationals who do not wish to participate in the lottery is greater than the number of vacancies, a raffle will be held among them to determine who will participate in the lottery; if after the selection process for the applicants who are Costa Rican nationals there is still a shortage of vacancies, the same procedure will be applied for the lottery of vacancies among foreign applicants. Subject to the conditions and terms included in the legislation and regulations applicable to each professional category listed above, for the temporary exercise of the profession may be exempted from the requirement to

perform compulsory social service.

Sector: Audiovisual - Advertising - Film, Radio, Television and other Entertainment Services

Obligations Concerned: National treatment (Articles 3.04 and 4.04) Most-favored-nation treatment (Articles 3.05 and 4.03)

Performance requirements (Article 3.07) Local presence (Article 4.05) Market access (Article 4.06)

Measures: Law No. 6220 of April 20, 1978 - Regulates Broadcast Media and Advertising Agencies - Article 3

Law No. 1758 of June 19, 1954 - Radio and Television Law - Article 11

Executive Decree No. 12764-G of June 22, 1981 - Regulates Advertising Law - Articles 1 and 5

Description: Investment and Cross Border Trade of Services

Mass media and advertising services may only be provided by companies incorporated in Costa Rica with nominative shares or under the form of "personal companies" in accordance with Costa Rican legislation. The radio and television programs must respect the following rules: a) If the commercials consist of tunes (jingles) recorded abroad, a certain sum must be paid each time the commercial is transmitted on the air in domestic television. Of the commercials broadcast on the air by each domestic television station or projected by a movie theater, only 30 percent may be of foreign origin. b) Commercials imported for physical media from outside the Central American region and broadcast on the air on domestic television shall pay a tax equivalent to 100 percent of their declared production value. Radio, film or television commercials are considered national when they are produced in any of the countries of Central America with which there is reciprocity in the matter. c) The number of radio programs and radio soap operas recorded abroad may not exceed 50 d) The number of programs filmed or recorded abroad may be limited to 60 percent of the total number of programs aired per day in domestic television transmissions. Radio, film or television commercials are considered national when at least 90 percent of the tune (or jingle) has been composed or arranged by Costa Rican nationals and not less than 90 percent of the image has been drawn, photographed, printed, filmed or videotaped by Costa Rican nationals and when at least 90 percent of the technical personnel participating in the production are Costa Rican nationals.

Sector: News Agency Services

Obligations Concerned: National Treatment (Article 4.04) Local Presence (Article 4.05)

Measures: Executive Decree No. 14931-C of October 20, 1983- Reform of the Regulations of the Organic Law of the Journalists' Association- Articles 6 and 26

Executive Decree No. 15294-C of February 27, 1984

Description: Cross Border Trade of Services

Unless previously authorized, a foreign journalist may cover events in Costa Rica only if he/she is a resident of Costa Rica. The Board of Directors of the Colegio de Periodistas may grant non-resident foreigners special permits to cover events in Costa Rica for up to one year, extendable as long as they do not harm or oppose the interests of the members of the Colegio de Periodistas. If the College of Journalists decides that an event of international importance will occur or has occurred in Costa Rica, the College of Journalists may grant to a non-resident foreigner who has adequate professional credentials, a temporary permit to cover such event for the foreign media that the journalist represents. Such permit shall only be valid for up to one month after the event.

Sector: Sports and Other Entertainment Services

Obligations Concerned: National Treatment (Articles 3.04 and 4.04) Local Presence (Article 4.05) Market Access (Article 4.06)

Measures: Law No. 7744 of December 19, 1997 - Law on Concession and Operation of Tourist Marinas - Articles 1, 12 and 21

Executive Decree No. 27030-TUR-MINAE-MOPT of May 20, 1998 - Regulations to the Law on Concession and Operation of Tourist Marinas - Article 52

Description: Investment and Cross-Border Trade of Services

To obtain concessions for the development of marinas and tourist berths, companies whose principal place of business is located abroad must establish themselves in Costa Rica. Foreign nationals must appoint a representative with sufficient legal authority and permanent residence in Costa Rica. Any foreign flag vessel using the services offered by a marina may remain in the Costa Rican exclusive economic zone for a maximum period of two years, extendable for equal periods. During their stay in Costa Rica, foreign flag vessels and their crew may not provide water transportation services, fishing, diving or other

activities related to sports and tourism, except for tourist cruises.

Sector: Railways, Gates and Airports

Obligations Concerned: Local presence (Article 4.05) Market access (Article 4.06)

Measures: Political Constitution of the Republic of Costa Rica - Article 121, paragraph 14

Law No. 7762 of April 14, 1998 - General Law of Concession of Public Works with Public Services - Articles 2, 3, 4, 5 and 31

Description: Cross-Border Trade of Services

National railroads, docks and airports - the latter while in service - may not be alienated, leased or encumbered, directly or indirectly, nor leave in any form the domain and control of the State. The Executive Branch may grant concessions of railroads, railroads, docks and international airports. In the case of the docks of Limon, Moin, Caldera and Puntarenas, concessions may only be granted for future works or expansions. All concessionary companies of railroads, docks or airports must be constituted in accordance with Costa Rican legislation and have their domicile in Costa Rica.

Sector: Wireless Services

Obligations Concerned: National Treatment (Articles 3.04 and 4.04) Most-Favored-Nation Treatment (Articles 3.05 and 4.03) Market Access (Article 4.06)

Measures: Political Constitution of the Republic of Costa Rica - Article 121, paragraph 14

Law No. 1758 of June 19, 1954 - Radio and Television Law - Articles 1, 2, 3 and 25

Description: Investment and Cross-Border Trade in Services

In Costa Rica, wireless services may not definitively leave the domain of the State and may only be provided by the public administration or by private individuals, in accordance with the law or by means of a special concession granted for a limited time and under the conditions and stipulations established by the Legislative Assembly. The right to establish radio stations in Costa Rica for the transmission and reception of official messages is permanently reserved to the State and is not subject to concession. Only Costa Rican nationals or companies whose capital is not less than 65 percent owned by Costa Rican nationals may establish or manage a company that provides wireless services. This restriction does not apply to the establishment and operation of amateur radio stations, but no rights shall be granted to a foreigner with residence in Costa Rica, when the country of origin of such foreigner does not grant the same right to Costa Rican nationals. Notwithstanding the measures listed above, including any requirements relating to capital ownership by Costa Rican nationals, Costa Rica shall allow, on a non-discriminatory basis, telecommunications service suppliers of another Party to compete effectively to supply directly to the customer, through the technology of their choice, the following telecommunications services in its territory, in accordance with the terms and conditions set out in the Agreement: (5) (a) private network services (6); (b) Internet services (7); and (c) mobile wireless services (8).

(5) If Costa Rica requires a license for the supply of a listed service, Costa Rica shall make licenses available within the time periods set out in this subparagraph.

(6) Private network services (closed user group services) means networks provided for communications without interconnection to the public switched telecommunications system at either end. Nothing in this Annex shall be construed to prevent Costa Rica from prohibiting persons operating private networks from using their networks to provide public telecommunications networks or services to third persons.

(7) Internet services shall include electronic mail services, on-line information retrieval and processing and database and electronic data interchange services, and offering the possibility of access to the Internet.

(8) Mobile wireless services means voice, data and/or broadband services provided over radioelectronic media in specified bands, using mobile or fixed terminal equipment, using cellular, PCS (Personal Communications Service), satellite or any other similar technology that may be developed in the future for these services.

Sector: Supply of liquor for on-premises consumption

Obligations Concerned: Market access (Article 4.06)

Measures: Law No. 10 of October 7, 1936 - Law on the Sale of Liquor - Articles 8, 11 and 16

Description: Cross-Border Trade in Services

It is at the discretion of the Municipalities to determine the number of liquor establishments that may be authorized in each of the areas under their jurisdiction. In no case may this number exceed the following proportion: (a) in provincial capitals, one establishment selling foreign liquors and one establishment selling domestic liquors for every three hundred inhabitants; (b) in all other cities having more than one thousand inhabitants, one establishment selling foreign liquors for every five hundred inhabitants and one establishment selling domestic liquors for every three hundred inhabitants; (c) cities having less than one thousand inhabitants but more than five hundred inhabitants may have two establishments selling foreign liquors and two establishments selling domestic liquors; and (d) any other city having five hundred inhabitants or less may have one establishment selling foreign liquors and one establishment selling domestic liquors. No establishment for the sale of liquor for consumption shall be permitted outside of the metro areas of the cities or where there is no permanent police authority; in public auction, no person may acquire authorization to have more than one establishment selling foreign liquor and one establishment selling domestic liquor in the same city.

Sector: Lottery Sales Services

Obligations Concerned: Market Access (Article 4.06)

Measures: Law No. 7395 of May 3, 1994 - Law on Lotteries - Article 2

Law No. 1387 of November 21, 1951 - Law on Raffles and Lotteries - Article 1

Description: Cross Border Trade of Services

The Social Protection Board of San Jose shall be the sole administrator and distributor of lotteries, except for the "Juego Crea". All lotteries, times, raffles and clubs that grant prizes consisting in the payment of cash are prohibited, except for the "Juego Crea" and those issued by the Social Protection Board of San Jose.

## **Annex I. Schedule of El Salvador**

Sector: All Sectors

Obligations Concerned: National treatment (Article 3.04) Most favored nation treatment (Article 3.05)

Measures: Constitution of the Republic of El Salvador, Articles 95 and 109

Description: Investment

A foreign person may not own real property, including a branch of a foreign person, if the person is a national of a country or is incorporated under the laws of a country, which does not permit Salvadoran nationals to own real property, except in the case of land for industrial establishments. A company incorporated under Salvadoran law, the majority of whose capital is owned by foreign persons or the majority of whose partners are foreigners, is subject to the preceding paragraph.

Sector: All Sectors

Obligations Concerned: National Treatment (Article 3.04) Most-Favored-Nation Treatment (Article 3.05)

Measures: Constitution of the Republic of El Salvador, Articles 95 and 115

Investment Law, Legislative Decree 732, Article 7

Commerce Code, Article 6

Description: Investment

Only the following persons may engage in commerce, industry and the rendering of small services in El Salvador: a) Salvadoran nationals born in El Salvador; and b) nationals of Central American countries. A company incorporated under Salvadoran law, the majority of whose capital is foreign-owned, or the majority of whose partners are foreigners, may not establish a small company to engage in small commerce, industry, and the provision of services.

Sector: Cooperative Production Companies

Obligations Concerned: National Treatment (Article 3.04)

Measures: Regulations of the General Law of Cooperative Associations, Title VI, Chapter 1, Article 84

Description: Investment

At least 75 percent of the total number of associates in a cooperative association must be Salvadoran persons. For purposes of this nonconforming measure, a branch of a company that has not been incorporated under Salvadoran law is not considered a Salvadoran person. For greater certainty, a cooperative production association exists for the purpose of providing certain benefits to its members, including distribution, sales, administration, and technical assistance. Its functions are not only economic but also social.

Sector: Duty-Free Shopping Centers and Establishments

Obligations Concerned: National Treatment (Article 3.04)

Measures: Constitution of the Republic of El Salvador, Article 95

Law for the Establishment of Duty-Free Shops at the Maritime Gates of El Salvador, Article 5

Description: Investment

Only Salvadoran nationals born in El Salvador and companies incorporated in accordance with Salvadoran laws may apply for a permit to establish a duty-free commercial center or establishment in the seaports of El Salvador; however, a company incorporated in accordance with Salvadoran laws, whose majority capital is owned by foreigners or whose partners are mostly foreigners, may not establish duty-free commercial centers or establishments in the seaports of El Salvador.

Sector: Air Services - Specialized Air Services

Obligations Concerned: Most-Favored-Nation Treatment (Article 4.03) National Treatment (Article 4.04)

Measures: Ley Organica de Aviación Civil, Articles 5, 89, 92

Description: Cross-Border Trade in Services

The provision of specialized air services requires prior authorization from the Civil Aviation Authority. The authorization of the Civil Aeronautics Authority is subject to reciprocity and must take into consideration the national air transport policy.

Sector: Aircraft Services - Aircraft repair and maintenance service during which the aircraft is withdrawn from service and pilots of specialized air services

Obligations Concerned: Most-favored-nation treatment (Article 4.03) National treatment (Article 4.04)

Measures: Ley Organica de Aviación Civil, Articles 39 and 40

Description: Cross-Border Trade in Services

El Salvador applies reciprocity requirements when recognizing or validating licenses, certificates and authorizations issued by foreign aeronautical authorities to: a) technical personnel providing repair and maintenance services during the period in which the aircraft is withdrawn from service; and b) pilots and other technical personnel providing specialized air services.

Sector: Communications Services - Radio and television advertising and promotion services

Obligations Concerned: Most favored nation treatment (Article 4.03) National treatment (Article 4.04)

Measures: Decree of the provisions to regulate the exploitation of works of an intellectual nature for public communication media and the participation of Salvadoran artists in public shows.

Legislative Decree No. 239, dated June 9, 1983, published in the Official Gazette No. 111, No. 279, dated June 15, 1983, Article 4

Decree No. 18, Substitution of Articles 1 and 4 of Legislative Decree No. 239, dated June 9, 1983, published in the Official Gazette No. 7, No. 282, dated January 10, 1984.

Description: Cross-Border Trade in Services

A minimum of 90 percent of the production and recording of any commercial advertisement to be used in El Salvador's

public communications media, whether television, radio broadcasting and printed material, originating in El Salvador, must be made by enterprises organized under Salvadoran law. Commercial advertisements produced or recorded by an enterprise organized under the laws of another Central American country may be used in the media of El Salvador, provided that such Party provides similar treatment to commercial advertisements produced or recorded in El Salvador. Commercial spots that do not meet the aforementioned requirements may be broadcast on the public media of El Salvador, if they are advertisements of international products, brands or services imported or produced in the country under license, and shall be subject to the payment of a single fee.

Sector: Communication Services - Television and radio broadcasting services

Obligations Concerned: National Treatment (Article 3.04)

Measures: Telecommunications Law, Article 123

Description: Investment

Concessions and licenses for free reception broadcasting services shall be granted to Salvadoran nationals born in El Salvador or to companies incorporated in accordance with Salvadoran laws. In the case of such companies, the capital stock must be constituted with at least 51 percent of Salvadorans.

Sector: Performing Arts

Obligations Concerned: National Treatment (Article 4.04)

Measures: Migration Law, Articles 62-A and 62-B

Legislative Decree No. 382, dated May 29, 1970, published in the Official Gazette No. 64, No. 227, dated April 10, 1970

Executive Decree No. 16, dated May 12, 1970, published in Official Gazette No. 87, No. 227, dated May 18, 1970

Description: Cross-Border Trade in Services

No foreign artist may offer a performance of any kind, without the prior express authorization of the Ministry of Government, which shall previously hear the illustrative opinion of the legally established union of artists in the field of work of the foreign artist, within 15 days of the request. The foreign artists shall pay in advance to the respective union a performance fee of 10 percent of the gross remuneration they receive in the country. No foreign artist or group of artists may perform in the country for more than 30 consecutive days or at intervals within a period of one year from the first day of their performance. An artist is any person who performs in El Salvador, either individually or in the company of another or others, for the performance of music, singing; dancing or reading or offering performances, either in person (live) before a large or small audience or by means of radio or television.

Sector: Circuses

Obligations Concerned: National Treatment (Article 4.04)

Measures: Ley de Migración, Article 62-C

Decree No. 122 dated November 4, 1988, published in the Diario Oficial No. 219, No. 301, dated November 25, 1988, Article 3

Decreto Legislativo No. 382 dated May 29, 1970, published in the Diario Oficial No. 64, No. 227, dated November 25, 1988.

Decree No. 193 dated March 8, 1989, published in the Official Gazette No. 54, No. 302, dated March 17, 1989, Articles 1 and 2

Regulations for the Application of Legislative Decrees 122 and 193 Related to Circus Companies, Articles 1 and 2

Description: Cross-Border Trade in Services

Foreign circuses or similar shows must pay to the respective Circus Artists Union the performance fee equivalent to 2.5 percent of the gross admission, which is collected daily at the box office. The fee must be paid in full through the withholding system. Every foreign circus must be authorized by the appropriate Ministry and, once authorized, notify the Salvadoran Association of Circus Entrepreneurs (ASEC) and is obliged to pay to the ASEC 3 percent of the gross income from the sale of tickets for each performance, as well as 10 percent of the total income obtained from the sale to the public within the circus of pennants, caps, T-shirts, balloons, photographs and other kinds of objects. A foreign circus that enters El Salvador may only work in the city of San Salvador for a period of 15 days, extendable only once for another 15 days. A



foreign circus that has performed in the country, may only enter again after one year from the date of departure.

Sector: Performing Arts

Obligations Concerned: National Treatment (Article 4.04)

Measures: Decree of the provisions to regulate the exploitation of works of intellectual nature by means of public communication and the participation of Salvadorian artists in public shows.

Legislative Decree No. 239, dated June 9, 1983, published in the Official Gazette No. 111, No. 279, dated June 15, 1983

Decree No. 18, Substitution of Articles 1 and 4 of Legislative Decree No. 239, dated June 9, 1983, published in the Official Gazette No. 7, No. 282, dated January 10, 1984

Description: Cross-Border Trade in Services

When it is a question of public spectacles with the live participation of artists of any generation, the participation of Salvadorian nationals shall be equivalent to 20 percent of the number of foreigners participating.

Sector: Construction and Related Engineering Services

Obligations Concerned: National Treatment (Articles 3.04 and 4.04) Most-Favored-Nation Treatment (Articles 3.05 and 4.03) Local Presence (Article 4.05)

Measures: Law of Incentives to National Enterprises of the Construction Industry, Legislative Decree No. 504, published in the Official Gazette No. 167, No. 308, dated July 9, 1990, amended by Legislative Decree No. 733, published in the Official Gazette No. 80, No. 311, dated April 23, 1991

Description: Investment and Cross-Border Trade in Services

To develop activities of design, consulting, consulting and administration of engineering or architectural projects or any type of work or study with respect to the construction of such projects, whether before, during or after construction, a company whose majority capital is owned by foreigners ("foreign company"), must be contractually associated with a company legally registered, qualified and established in El Salvador ("salvadoreña company") unless the foreign company determines that such salvadoreña company is not available. In addition, an engineering or architectural project is subject to the following requirements: a) companies incorporated in accordance with Salvadoran law must have an investment in the project equivalent to at least 20 percent of the value of the project; and b) such companies must provide at least 30 percent of the technical personnel and 90 percent of the administrative personnel for the project. The requirements of subparagraph b) do not apply if the foreign company determines that Salvadoran companies are not capable of providing the necessary resources. For greater certainty, technical and administrative personnel do not include executive personnel. The requirements of subparagraphs a) and b) above do not apply: i) when the funds for the project come partially or wholly from foreign governments or international organizations; or ii) to specific projects or donations for specialized technical cooperation.

Sector: Public Accounting and Auditing

Obligations Concerned: National treatment (Articles 3.04 and 4.04) Most-favored-nation treatment (Articles 3.05 and 4.03)

Measures: Law Regulating the Practice of Accounting, Articles 2, 3 and 4

Descriptions : Investment and Cross-Border Trade in Services

Only a Salvadoran national may be authorized as a public accountant. Only a person authorized as a public accountant can be authorized as an external auditor. For a company to be authorized to provide public accounting services, the main partners, shareholders or associates must be Salvadoran nationals, and at least one person among the partners, shareholders, associates or administrators must be authorized as a public accountant in El Salvador.

Sector: Professional Services:- Architectural Services- Engineering Services- Integrated Engineering Services- Urban Planning and Landscape Services

Obligations Concerned: National Treatment (Article 4.04) Local Presence (Article 4.05)

Measures: Ley de Urbanismo y Construcción, Articles 4 and 8

Executive Decree No. 34, D.O. No. 4, Torno 306 del 8. 4, Torno 306 of January 8, 1990, Registro Nacional de Arquitectos, Ingenieros, Proyectistas y Constructores.

Decreto Ejecutivo No. 75, D.O. No. 11, Torno 310 of January 17, 1991, Reglamento Interno del Consejo Nacional de Arquitectos, Ingenieros, Proyectistas y Constructores, Articles 25, 26 and 27.

Description: Cross-Border Trade in Services

Only architects and engineers registered in the Registro Nacional de Arquitectos, Ingenieros, Diseñadores y Constructores (Registro Nacional) may supervise an architectural and engineering work of construction projects and sign and seal the architectural or engineering plans for such projects. An architect or engineer must be a resident of El Salvador to be registered in the Registro Nacional. Designers, builders and electrical installation technicians must be Salvadoran nationals to be registered in the Registro Nacional.

Sector: Professional Services - Health Services (including but not limited to: General and Specialized Medical Services, Dental Services, Veterinary Services, Paramedical Services, Services Provided by Psychologists, Midwives, Nurses, Physiotherapists, Chemists and Qualified Clinical Laboratory Technicians, Technicians and Auxiliaries)

Obligations Concerned: Most favored nation treatment (Article 4.03) National treatment (Article 4.04) Local presence (Article 4.05)

Measures: Health Code, Articles 4, 5, 17, 23, 30, 31, 32 and 306.

Description: Cross Border Trade in Services

Authorization is required for the exercise of the various specialized, technical and auxiliary health professions and activities. The authorization will be granted by the respective Boards of Surveillance of the Professions. The Boards may grant authorizations of permanent, temporary or provisional character. Only the authorizations of permanent character grant the private professional activity. To the other authorizations, restrictions and limitations that the law contemplates for the respective purposes are applied. To grant authorization of permanent character, the respective Surveillance Board, will demand that the persons are Salvadoran nationals by birth or that they are authorized to reside permanently in the country. In addition to complying with the requirements of the law, foreigners must provide evidence that in the jurisdiction where they obtained their academic degree, Salvadoran nationals or graduates in El Salvador are allowed to practice the profession under similar circumstances.

Sector: Professional Services- Legal Services (Notary Public)

Obligations Concerned: Most favored nation treatment (Article 4.03) National treatment (Article 4.04) Local presence (Article 4.05)

Measures: Notarial Law, Article 4

Description: Cross Border Trade in Services

Only those persons authorized by the Supreme Court of Justice may exercise the function of notary public. Only Salvadoran nationals who are attorneys at law may obtain such authorization. Central American nationals who have been authorized to practice law in El Salvador and who have resided in the country for at least two years may also obtain such authorization, provided that: a) they have not been disqualified from practicing notary public in their own country and b) Salvadoran nationals may exercise such function in their country without any requirements other than those established in Salvadoran law.

Sector: Professional Services - Teachers

Obligations Concerned: National Treatment (Article 4.04)

Measures: Constitution of the Republic, Article 60

Description: Cross-Border Trade in Services

Only Salvadoran nationals may teach national history and the Constitution.

Sector: Professional Services- Customs Agents

Obligations Concerned: National treatment (Articles 3.04 and 4.04) Most favored nation treatment (Articles 3.05 and 4.03)

Measures: Regulations of the Central American Uniform Customs Code, Article 18.

Description: Investment and Cross-Border Trade in Services

Only nationals of Central American countries may work as customs agents.

Sector: Transportation Services- Land Transportation Services

Obligations Concerned: National Treatment (Articles 3.04 and 4.04)

Measures: Constitution of the Republic of El Salvador, Article 95 Law of Land Transportation, Transit and Road Safety, Articles 38-A and 38-B

General Regulation of Land Transportation, Articles 1 and 2

Description: Investment and Cross-Border Trade in Services

Permits for the provision of regular and non-regular passenger transportation services within El Salvador may only be granted to Salvadoran nationals or their partners. Only vehicles with Salvadoran license plates may transport goods from points in El Salvador to other points in El Salvador. At least 51 percent of the capital stock of a company engaged in the transportation of goods in El Salvador must be owned by Salvadorian nationals. If such capital is owned by a company, at least 51 percent of the shares of such company must be owned by Salvadoran nationals.

Sector: Land Transport

Obligations Concerned: Market Access (Article 4.06)

Measures: General Land Transport Regulations, Articles 11, 29 and 30

Description: Cross-Border Trade in Services

Concessions for public land passenger transportation for a specific route will be limited, subject to technical studies of existing demand. A concession of a free supply service of public land passenger transport is limited to one vehicle.

Sector: Energy

Obligations Concerned: Market Access (Article 4.06)

Measures: Law Regulating the Deposit, Transportation and Distribution of Petroleum Products, Article 8

Description: Cross-Border Trade in Services

The construction of a gas station shall not be authorized unless it is at a prudent distance from another gas station, in order to avoid excessive concentration. A prudent distance is considered to be no less than 600 meters in an urban area, and 10 kilometers in a rural area; the latter case also applies to roads of the same destination. For dual carriageway arterials, with a central separator, the distance shall be taken on each carriageway, independently of each other.

## **Annex I. Schedule of Guatemala**

Sector: All Sectors

Obligations Affected: National Treatment (Article 3.04)

Measures: Decree Number 118-96 reforming Decree Numbers: 38-71 and 48-72, Articles 1 and 2.

Description: Investment

Only the following persons may obtain titles of ownership, lease or usufruct of national lands in the Department of Peten:1) Guatemalans by birth, who are not owners of rustic real estate in any part of the territory that is not larger than 45 hectares; and2) Guatemalans by birth, who are not owners of industrial, mining or commercial enterprises. The companies owned 100% by Guatemalans by birth, that meet the requirements listed in the previous paragraph, may obtain titles of ownership, lease or usufruct of national lands in the Department of Petén.

Sector: All Sectors

Obligations Concerned: National Treatment (Article 3.04)

Measures: Supplementary Titling Law, Decree Number 49-79, Article 2

Description: Investment

Only Guatemalans by birth and companies that are majority owned by Guatemalans by birth, may obtain supplementary titling.

Sector: All Sectors

Obligations Concerned: National Treatment (Article 3.04)

Measures: Political Constitution of the Republic of Guatemala, Article 122

Ley Reguladora de las Areas de Reservas Territoriales del Estado de Guatemala, Decreto Numero 126-97, Article 5

Description: Investment

Foreigners, require an authorization from the Office of Control of State Reserve Areas to acquire in property the following state-owned lands: a) national lands located in urban areas, and b) national lands in property, on which there are rights registered in the General Property Registry, prior to March 1, 1956, located in: i. A land strip of three kilometers along the oceans; ii. 200 meters around the shores of lakes; iii. 100 meters on each side of the banks of navigable rivers; and, v. 50 meters around the sources and springs where waters that supply the populations are born. Only the Government of Guatemala may rent real estate owned by the State, described above, to companies legally incorporated in Guatemala.

Sector: All Sectors

Obligations Concerned: National Treatment (Article 3.04)

Measures: Political Constitution of the Republic of Guatemala, Article 123

Description: Investment

Only Guatemalans by birth and companies owned 100% by Guatemalans by birth, may own or possess national land located within 15 kilometers of the borders. Foreigners may, however, own or possess urban property or State property rights, registered in the General Property Registry, prior to March 1, 1956 within 15 kilometers of the border.

Sector: All Sectors

Obligations Concerned: National Treatment (Article 3.04)

Measures: Code of Commerce, Decree Number 2-70 and its reforms, contained in Decree Number 62-95, Article 215

Description: Investment

For a company incorporated under the foreign laws to establish itself in Guatemala, in any form, it must constitute a capital assigned for its operations in Guatemala, and a guarantee in favor of third parties for an amount not less than the equivalent in quetzales of 50,000 United States dollars, which must remain in force during the entire time said company operates in Guatemala. For greater certainty, the requirement of a bond should not be considered as an impediment for a company organized under the laws of a foreign country to establish itself in Guatemala.

Sector: Forestry

Obligations Concerned: National Treatment (Article 3.04)

Measures: Political Constitution of the Republic of Guatemala, Article 126

Description: Investment

Only Guatemalans by birth or companies incorporated under national laws may exploit and renew forest resources.

Sector: Professional Services - Notaries

Obligations Concerned: National Treatment (Article 4.04) Local Presence (Article 4.05)

Measures: Notarial Code, Decree Number 314, Article 2

Description: Cross Border Trade in Services

To practice as a notary an individual must be Guatemalan by birth and domiciled in Guatemala.

Sector: Professional Services

Obligations Concerned: National Treatment (Article 3.04)

Measures: Commercial Code, Decree Number 2-70, Article. 213

Description: Investment

An enterprise organized under the laws of a foreign country engaged in the rendering of professional services that requires legal university recognition of a university degree, diploma or degree, may not be established in Guatemala. However, a company may provide such services in Guatemala through a contract or other relationship with a company incorporated in Guatemala.

Sector: Cultural Entertainment

Obligations Concerned: National Treatment (Article 4.04) Local Presence (Article 4.05)

Measures: Ley de Espectaculos Publicos, Decreto Numero 574, Articles 36, 37 and 49

Ministerial Agreement No. 592-99 of the Ministry of Culture and Sports, Article 1

Description: Cross Border Trade of Services

For the authorization of the administration of cultural entertainment a contract with foreign groups, companies or artists is required. A show company, for the presentation of foreign artists or artistic groups in Guatemala, must present a letter of consent from the union or non-governmental organization of artists, legally recognized in the Pafs. In the mixed shows, formed by one or several shows and number of varieties, special inclusion will be given to Guatemalan artists, if the circumstances of the cast, program and contract allow it.

Sector: Tourism Services - Tour Guides

Obligations Concerned: National Treatment (Article 4.04) Local Presence (Article 4.05)

Measures: Agreement Number 219-87 of the Guatemalan Tourism Institute - Operation of Tour Guides, Article 6

Description: Cross Border Trade of Services

Only Guatemalans by birth or foreigners residing in Guatemala may render services as tourist guides in Guatemala.

Sector: Specialized Air Service

Obligations Concerned: Most-Favored-Nation Treatment (Article 4.03)

Measures: Civil Aviation Law, Congressional Decree No. 93-2000, Article 24

Description: Cross-Border Trade in Services

In the performance of aeronautical functions on board foreign aircraft, persons must possess for the exercise thereof, a certificate, license or the equivalent accepted by the Directorate General of Civil Aeronautics or issued in accordance with the International Agreements to which the Republic of Guatemala is a party and under reciprocity conditions.

Sector: Specialized Air Services

Obligations Concerned: National Treatment (Article 4.04)

Measures: Ley de Aviación Civil, Decreto Numero 93-2000, Article 62

Description: Cross-Border Trade in Services

In Specialized Air Services operations of Guatemalan operators, all personnel performing aeronautical functions on board must be Guatemalan by birth; however, the Directorate General of Civil Aviation may authorize foreign personnel for a period not to exceed three months, counted from the date of authorization. The Directorate General of Civil Aviation may extend this period, if it is determined that there are no trained personnel in Guatemala.

Sector: Air Transport Services

Obligations Concerned: National Treatment (Article 3.04) Senior Management and Boards of Directors (Article 3.08)

Measures: Ley de Aviación Civil, Decreto Numero 93-2000, Article 71

Description: Investment

Only Guatemalans by birth or a company incorporated under the national laws may be operators of a commercial air transportation company in Guatemala. For greater certainty, commercial air transportation includes all domestic air transportation of passengers, mail or cargo. To comply with the provision of such services, a company must also meet the following requirements: a) the company must have its principal place of business in Guatemala; and b) at least half plus one of the directors, managers and individual persons in charge of the administration and control of the company must be Guatemalan or reside permanently in Guatemala.

Sector: Road Transportation of Passengers and Cargo

Obligations Concerned: National Treatment (Article 4.03)

Measures: Transportation Law, Decree Number 253, Article 4

Governmental Agreement Number 135-94, Articles 3, 9, and 10, Regulations for the Transportation of Cargo Equipment Service.

Protocol to the General Treaty on Central American Economic Integration, Articles 15 and 28

Description: Cross-Border Trade in Services

The public passenger or cargo transportation service may be provided by individuals or legal entities, both domestic and foreign; however, no motor vehicle, with foreign license plates or registration plates, may transport passengers or commercial cargo between points within the national territory.

## **Annex I. Schedule of Honduras**

Sector: All Sectors

Obligations Concerned: National Treatment (Article 3.04)

Measures: Decree No. 131, Constitution of the Republic of Panama. 131, Constitution of the Republic, Title III, Chapter II, Article 107

Decree No. 90-1990, Law for the Acquisition of Urban Property in the Areas delimited by Article 107 of the Constitution of the Republic, Articles 1 and 4

Decree No. 968, Law for the Declaration, Planning and Development of Tourism Zones, Title V, Chapter V, Article 16

Description: Investment

State lands, common land, and private land within 40 kilometers of the borders and coastlines, and such lands on the islands, keys, reefs, breakwaters, reefs, shoals, sirtes and sandbanks in Honduras, may be acquired, possessed, or held only under any title by nationals of Honduras by birth, by companies constituted entirely by nationals of Honduras, and by institutions of the State. Notwithstanding the preceding paragraph, any person may acquire, own, hold, or lease for up to 40 years (which may be renewed) urban land in such areas provided that it is certified and approved for tourism purposes, economic or social development, or for the public interest by the Secretary of State in the Office of Tourism. Any person acquiring, owning, or holding such urban land holdings may transfer such land only upon prior authorization of the Secretary of State in the Office of Tourism.

Sector: All Sectors

Obligations Concerned: National Treatment (Article 3.04) Most Favored Nation Treatment (Article 3.05)

Measures: Decree No. 131, Constitution of the Republic of Honduras, Title VI, Chapter I, Article 337

Agreement No. 345-92, Regulations of the Law of Investments, Chapters I and VI, Articles 3 and 49

Description: Investment

Small-scale industry and commerce is reserved to Honduran persons. Foreign investors may not engage in small-scale industry and commerce, unless they are naturalized citizens and their country of origin grants reciprocity. "Small-scale industry and commerce" is defined as an enterprise with capital of less than 150,000.00 Lempiras, excluding land, buildings, and vehicles.

Sector: All sectors

Obligations Concerned: National Treatment (Article 3.04) Most Favored Nation Treatment (Article 3.05)

Measures: Decree No. 65-87, dated May 20, 1987, Law of Cooperatives of Honduras, Title II, Chapter I, Articles 18 and 19

Agreement No. 191-88 dated May 30, 1988, Regulations of the Law of Cooperatives of Honduras, Article 34(c) and (d)

Description: Investment

Non-Honduran cooperatives may establish themselves in Honduras with prior authorization from the Honduran Institute of Cooperatives of Honduras, such authorization will be granted as long as there is: (a) Reciprocity in the country of origin, and (b) The non-Honduran cooperative has, at least one permanent legal representative in Honduras.

Sector: Customs Agents and Brokers

Obligations Concerned: National Treatment (Articles 3.04 and 4.04)

Measures: Decree No 212-87, Customs Law Title IX, Chapter I, First and Third Sections, Articles 177 and 182

Description: Investment and Cross-Border Trade in Services

Licensed customs agents must be Honduran nationals by birth. Employees of the customs broker, who carry out formalities on behalf of the customs broker, must also be Honduran nationals by birth.

Sector: Agricultural

Obligations Concerned: National Treatment (Article 3.04)

Measures: Acuerdo No 2124-92, Reglamento de Adjudicación de Tierras en la Reforma Agraria, Artículos 1 y 2

Description: Investment

Beneficiaries of agrarian reform must be Honduran nationals by birth individually or organized in peasant cooperatives or other peasant enterprises.

Sector: Communications Services- Postal

Obligations Concerned: Market Access (Article 4.06)

Measures: Decree No 120-93 Ley Organica de la Empresa de Correos de Honduras, Articles 3 and 4.

Description: Cross-Border Trade in Services

The operation of postal services in Honduras is reserved exclusively to the Empresa Hondurena de Correos (HONDUCOR).  
(1)

(1) However, this exclusivity does not apply to immediate delivery services.

Sector: Radio, television and newspapers

Obligations Concerned: Senior corporate management and boards of directors. (Article 3.08).

Measures: Decree No 131, Constitution of the Republic of Honduras, Chapter II, Article 73, third paragraph

Decree No 6, Law of Broadcasting of Thought, Chapter IV, Article 30

Decree No 759, Law of the College of Journalists of Honduras, Article 8, amended by Decree No 79 of January 1, 1981

Description: Investment

Only Honduran nationals by birth may hold senior management positions in printed newspapers or free-transmission news media (radio and television), including the intellectual, political and administrative orientation thereof. "This does not apply to printed newspapers or news media established outside Honduras.

Sector: Telecommunications

Obligations Concerned: National Treatment (Article 4.04)

Measures: Decree No. 185-95, Framework Law of/ Telecommunications Sector Chapter I, Article No. 26

Agreement No. 141-2002 dated December 26, 2002, General Regulations of the Framework Law of/ Telecommunications Sector, Title III, Chapter I, Article 93.

Description: Cross-Border Trade in Services

Foreign governments may not participate directly in the provision of public telecommunications services.

Sector: Telecommunications

Obligations Concerned: Market Access (Article 4.06)

Measures: Decree No. 244-98 of October 2, 1998, Article 1

Description: Cross-Border Trade in Services

The Empresa Hondureña de Telecomunicaciones (HONDUTEL) has the exclusive right to provide throughout the territory of the Republic of Honduras, national and international telecommunications services, such as: carrier services, telex, telephony and telegraphy, including telegraph services in those places where there is no other means of communication with the rest of the country.

Reduction schedule: As of December 25, 2005, HONDUTEL will no longer enjoy the exclusive right to provide national and international telecommunications services throughout the national territory of Honduras, such as: carrier services, telex, telephony and telegraphy, including telegraph services in those places where there is no other means of communication with the rest of the country.

Sector: Construction or consulting services and related engineering services - civil engineering.

Type of Reservation: National Treatment ( 3.04 and 4.04) Most Favored Nation Treatment (4.03 ) Local Presence (4.05) Market Access (4. 06)

Measures: Decree No 47-1987, Organic Law of the College of Civil Engineers of Honduras

Regulations of the Organic Law of the College of Civil Engineers of Honduras, Articles 100 (A)- (D) and 101

Decree No 753, Organic Law of the College of Architects of Honduras, Articles 37 (b), (c), (d), (g), and (h)

Regulations of the Organic Law of the College of Architects of Honduras, Articles 4(h), 7(a), (c ), (d) and (h), 13, 68 and 69

Decree No 902 , Organic Law of the College of Mechanical, Electrical and Chemical Engineers of Honduras, Article 40 ( c), (d) and (h).

Description: Investment and Cross-Border Trade in Services

Consulting and construction firms must be organized in accordance with Honduran law to be members of the Colegio de Ingenieros Civiles de Honduras (CICH) and to perform civil engineering projects in Honduras. For greater certainty, consulting and construction firms incorporated under the law of a foreign country may provisionally register with the CICH to perform specific civil engineering projects. Higher registration fees will apply to foreign firms. In addition, foreign personnel must be authorized by the CICH in order to work on such projects.

Sector: Distribution Services - Petroleum products (liquid fuel, automotive oil, diesel, kerosene, and LPG)

Obligations concerned: National Treatment (Article 3.04) Local Presence (Article 4.05)

Measures: Decree No 549, Law on Representatives, Distributors and Agents of National and Foreign Companies, Chapter I and VI, Articles 4 and 25.

Decree No 804, reforming Article 4 of the Law of Representatives, Distributors and Agents of Domestic and Foreign Companies.

Description : Investment and Cross-Border Trade in Services

Only Honduran nationals and companies incorporated under Honduran law may be authorized to sell petroleum products. Companies must be at least 51 percent owned by Honduran nationals.



Sector: Electricity

Obligations Concerned: Market Access (Article 4.06)

Measures: Decree No. 158-94 dated November 26, 1994, Ley Marco del Sub Sector Electrico, Chapter V, Article 15

Description: Cross-Border Trade in Services

Only the Government of Honduras, through the Empresa Nacional de Energia Electrica, may carry out the transmission of electric power, conduct the operation of the transmission system and dispatch center.

Sector: Lotteries

Obligations affected: Market access (Article 4.06)

Measures: Decree No 438, dated April 23, 1977, Article 5 (c), Ley Organica de Patronato Nacional de la Infancia

Description: Cross Border Trade in Services The Patronato Nacional de la Infancia (PANI) exclusively administers the national lottery.

Sector: Education services - Private preschool, primary and secondary education services

Obligations concerned: High-level corporate management and boards of directors (Article 3.08) Most-favored-nation treatment (4.03) National treatment (Article 4.04) Local presence (Article 4. 05)

Measures: Decree No 131, Constitution of the Republic, Title III, Chapter VIII, Articles 34, 166 and 168

Decree No 79, Organic Law of Education, Articles 64 and 65

Decree No 136- 97, Law of the Statute of the Teacher, Articles 7 and 8

Executive Agreement No 0760 -5E-99, Reglamento General del Estatuto del Docente, Article 6

Description: Investment and Cross-Border Trade in Services

The director or supervisor of a school must be a Honduran national by birth. Teachers at all levels of the educational system must be Honduran nationals by birth. Foreign nationals may, however, teach particular subjects at the middle or high school levels if there are no such Honduran nationals available to teach such subjects. Notwithstanding the preceding sentence, foreign nationals may teach the Constitution, civics, geography, and history of Honduras only if there is reciprocity for Honduran nationals in their country of origin. Private schools at all levels must be incorporated under Honduran law. For greater certainty, there are no restrictions on foreign ownership of such schools.

Sector: Entertainment Services- Musicians

Obligations concerned: National Treatment (Articles 3.04 and 4.04)

Measures: Decree No 123 dated October 23, 1968, Law for the Protection of Musical Artists, Articles 1 - 4.

Description: Investment and Cross-Border Trade in Services

Notwithstanding the above measure, Honduras agrees that foreign musical artists wishing to present shows in Honduras either individually or jointly shall pay the Sindicato de Artistas de Honduras five percent of their fees and the impresario or lessee shall, if possible, hire for the same show local musical artists from the country. For greater certainty, foreign musical artists shall register with the Sindicato de Artistas de Honduras for each performance in Honduras.

Sector: Championships and Soccer Game Services

Obligations concerned: Most-Favored-Nation Treatment (4.03) National Treatment (Article 4.04) Local Presence (Article 4.05)

Measures: Regulations for Championships and Competitions Liga Nacional de Futbol No Aficionado de Primera Division, Articles 9 and 1

Description: Cross-Border Trade in Services

Foreign nationals who are players in the Honduran National Soccer League must be temporary residents of Honduras. Each team in such league must register a maximum of four foreign players, one of whom must be a national of a Central American country.

Sector: Recreational, cultural and sports services - Casinos for games of chance (includes roulette, checkers, cards, point and bank, baccarat, slot machines and other similar games)

Obligations concerned: National Treatment (Article 3.04) Local presence (Article 4. 05)

Measures: Decree No 488, dated February 16, 1977, Ley de Casinos de Juegos de Envite o Azar, Article 3

Description: Investment and Cross-Border Trade in Services

Only Honduran nationals by birth and companies organized under Honduran law may operate a casino.

Sector: Environmental Services

Obligations Concerned: Access to markets (Article 4.06)

Measures: Decree No 134-90, Law of Municipalities, Article 13 (3) and (4)

Decree No 104-93, General Law of the Environment, Articles 29 and 67

Description: Cross-Border Trade in Services

Only the State, through its municipalities, may provide public services of water distribution, waste treatment, and sanitation and hygiene services. For greater certainty, municipalities are responsible for the construction of aqueducts, the maintenance and administration of drinking water, sanitary sewerage, drainage and the promotion and development of related projects.

Sector: Distribution, Wholesaling and Retailing - Arms, ammunition and other related items

Obligations Concerned: Market Access (Art. 4. 06)

Measures: Decree No 131, Constitution of the Republic, Title V, Chapter X, Article 292

Decree No 80-92, Law of Investments, Chapter VI, Article 16

Description: Cross Border Trade of Services

The distribution at wholesale and retail level of the following articles is reserved exclusively to the Armed Forces of Honduras: - ammunition;- war airplanes;- military rifles;- all kinds of pistols and pevolvers, 41 caliber or larger;- regulation pistols of the Honduran Army;- silencers for all kinds of firearms;- firearms;- accessories and ammunition;- cartridges for firearms;- apparatus and other indispensable accessories for the loading of cartridges;- powder, explosives, percussion caps and fuses;- protective masks against asphyxiating gases;- wind rifles. For greater certainty the use of explosives for commercial purposes may be authorized par the competent authority of Honduras.

Sector: Research and Security Services

Obligations concerned: National Treatment (Article 3.04) Senior corporate management and boards of directors (Article 3.08).

Measures: Decree No. 156-98, Ley Organica de la Policía Nacional, Article 91

Description: Investment

To establish themselves in Honduras, foreign private security companies must associate with Honduran companies engaged in the same activity and designate a Honduran national by birth as a senior executive.

Sector: Fishing Industry

Obligations Concerned: National Treatment (Article 3.04)

Measures: Decree No 154, Fisheries Law, Chapters IV, Articles 20, 26 and 29

Description: Investment

Only Honduran nationals resident in Honduras and companies incorporated under Honduran law, which are at least 51% owned by Honduran nationals, may engage in commercial fishing in waters, seas, rivers and lakes located in Honduras. For greater certainty, only vessels flying the Honduran flag may engage in commercial fishing activities in Honduran territorial waters, and for greater certainty, only Honduran nationals by birth may be captains of commercial fishing vessels.

Sector: Professional Services

Obligations Concerned: Most-Favored-Nation Treatment (Article 4.03) National Treatment (Article 4.04) Local Presence (Article 4.05)

Measures: Decree No 131, Constitution of the Republic of Honduras, Chapter VIII, Article No 177

Regulations for the Recognition of University Studies and Incorporation of Professionals, Articles 2, 11 and 18

Description: Cross-Border Trade in Services

Notwithstanding existing measures related to the requirements for! Honduras agrees that if a Central American country jurisdiction recognizes a professional degree granted by Honduran educational institutions, then Honduras will recognize the equivalent professional degree granted by an educational institution of the Central American countries. Furthermore, Honduras agrees that if a jurisdiction in the Central American countries permits Honduran nationals to apply for and receive a license or certificate for the provision of a professional service, then Honduras will permit nationals of the Central American countries to apply for and receive an equivalent license or certificate. For greater certainty, the preceding paragraphs do not automatically grant recognition of professional degrees or the right to practice, nor do they eliminate the nationality requirement for certain professionals reserved exclusively for Honduran nationals, as indicated in Annexes I or II. In addition, the corresponding professional association in Honduras shall recognize a license granted by a jurisdiction in the Central American countries, and shall permit the beneficiary of such license to register with that association and practice that profession in Honduras on a temporary basis on the basis of the license granted by a jurisdiction in the Central American countries, in the following cases: a) no academic institution in Honduras offers a course of study that permits professional practice in Honduras; b) the holder of the license is a recognized expert in the professional field; c) permitting the professional to practice in Honduras, will advance through training, demonstration, or other opportunity the development of that profession in Honduras.

Sector: Air Transport

Obligations affected: National Treatment (Article 3.04) Senior corporate management and boards of directors (Article 3.08).

Measures: Decree No 146, Ley de Aeronautica Civil, Chapter X, Second, Third and Fourth Sections, Article 80.

Description: Investment

Only Honduran nationals and companies incorporated under Honduran law may provide domestic and international commercial air transport services by means of an aircraft under the Honduran flag. Such companies must be controlled and owned at least 51 percent by Honduran nationals.

Sector: Air Transport

Obligations Concerned: Most-Favored-Nation Treatment (4.03) National Treatment (Article 4.04) Local Presence (4. 05)

Measures: Decree No. 146, Civil Aeronautics Law, Chapter X, Second, Third and Fourth Sections, Articles 37, 125 and 126

Description: Cross-Border Trade in Services

Private specialized air transportation services for remuneration may only be provided by Honduran nationals or companies incorporated under Honduran law and must be authorized by the Secretariat of Public Works, Transportation and Housing. In the absence of Honduran personnel to perform such activities, foreign pilots or other technical personnel may be allowed to perform such activities, giving preference to qualified personnel from any Central American country.

Sector: Maritime Transportation - Coastwise Navigation

Obligations affected: National Treatment (Article 3.04 and 4.04) Most Favored Nation Treatment (Article 3.05 and 4.03) Local Presence (Article 4.05)

Measures: Decree No. 167-94, Ley Organica de la Marina Mercante Nacional, dated January 2, 1995, Title II, III, Chapter VII, Article 40

Agreement No. 000764, Reglamento de Transporte Marítimo dated December 13, 1997, Article 6

Description: Investment and Cross Border Trade of Services

Cabotage navigation for mercantile purposes is reserved to Honduran merchant vessels. Exceptionally, when there are no Honduran merchant vessels or they are not available and for the time that such circumstance lasts, the Directorate General

of the Merchant Marine may authorize foreign merchant vessels to provide cabotage services in Honduras. In such circumstances preference will be given to vessels flying the flag of Central American countries. Honduran merchant vessels must be constituted in accordance with the laws of Honduras, and at least 51 percent of its subscribed and paid-up capital stock must be owned by Honduran nationals and the company must be domiciled in Honduras.

Sector: Land Transportation

Obligations concerned: National Treatment (Articles 3.04 and 4.04) Most Favored Nation Treatment (Article 4.03) Local Presence (Article 4.05) Market Access (Article 4.06)

Measures: Decree No 319- 1976, Land Transportation Law, Articles 3, 5,17, 18, 27 and 28 Agreement No 200, Regulations of the Land Transportation Law, Articles 1, 7,32, 33 and 34.

Description: Investment and Cross-Border Trade in Services

Domestic public land passenger transportation services and cargo transportation services may be provided only by Honduran nationals and companies incorporated under Honduran law in which at least 51 percent of the capital is held by Honduran nationals It is necessary to obtain a certificate of operation from the General Directorate of Transportation of the Secretariat of State in the Offices of Public Works, Transportation and Housing (SOPTRAVI), which is subject to an economic necessity test. International public land passenger transportation services and cargo transportation services may be provided by foreign nationals and by companies incorporated under the laws of a foreign country on the basis of reciprocity, but authorization for particular routes shall be granted in preference to Honduran nationals and to companies incorporated under Honduran law.

Sector: Transportation-rail

Obligations concerned: National treatment (Article 3.04) Senior corporate management and boards of directors (Article 3.08).

Measures: Decree No. 48, Ley Constitutiva del Ferrocarril Nacional de Honduras, Chapters I and VI11, Article 32 and Article 12 (amended by Decree No. 54)

Description: Investment

The Ferrocarril Nacional de Honduras may sell its subsidiaries to private entrepreneurs of Honduran nationality and to companies incorporated under Honduran law.To be a senior manager of the Ferrocarril Nacional de Honduras, it is required to be a Honduran national by birth.

Sector: Other Commercial Services - Almacenes Generales de Depósito (General Warehousing)

Obligations Concerned: Market Access (Article 4.06)

Measures: Agreement No. 1055, Regulation of General Warehouses, Article 3

Description: Cross-Border Trade in Services

Only companies incorporated under the laws of Honduras with fixed capital and with the sole purpose of supplying warehousing services are authorized to supply such services.

Sector: Business Management Consulting Services

Obligations concerned: Most-Favored-Nation Treatment (4.03) National Treatment (Article 4.04) Market Access (Article 4. 06)

Measures: Decree No 900, Ley Organica del Colegio de Administradores de Empresas de Honduras, Articles 61- E and 61-F

Reglamento de Ley Organica del Colegio de Administradores de Empresas de Honduras, Articles 96, 111, 113 and 114

Description: Cross Border Trade of Services

Foreign nationals may enter into contracts to provide consulting services in business administration after they have obtained the authorization of the contract from the Colegio de Administradores de Empresas de Honduras. Companies incorporated under foreign law may enter into contracts to provide business management consulting services after they have obtained contract authorization from the Colegio de Administradores de Empresas de Honduras, if such services are not otherwise available in Honduras or due to contractual needs. To provide such services, such companies must form a partnership with Honduran companies that are duly registered with the Colegio de Administradores de Empresas de Honduras. Foreign nationals and companies incorporated under foreign law must pay registration fees higher than those

imposed on Honduran nationals and companies incorporated under Honduran law.

Sector: Economic Consulting Services

Obligations concerned: Local Presence (Artículo 4.05)

Measures: Decree No 1002, Ley Organica de/ Colegio Hondureño de Economistas, Artículo 58.

Description: Cross-Border Trade in Services

To provide economic consulting services in the territory of Honduras, foreign economic consulting firms must be represented by a member of/ Colegio Hondureño de Economistas.

Sector: Agricultural Engineering and Agronomy

Obligations concerned: Most-Favored Nation Treatment (Article 4.03) National Treatment (Article 4.04)

Measures: Decree No 148-95, Organic Law of the College of Professionals in Agricultural Sciences of Honduras, Article 5

Regulations of the Organic Law of the College of Professionals in Agricultural Sciences of Honduras, Article 9 and Schedule of Payments to COLPROCAH.

Description: Cross-Border Trade in Services

Foreign agronomists and agricultural engineers will be subject to higher registration fees in the professional association than those imposed on Honduran agronomists and agricultural engineers.

Sector: Forestry engineers

Obligations concerned: National treatment (Article 4.04) Local presence (Article 4.05)

Measures: Ley Organica del Colegio de Ingenieros forestales de Honduras, Article 66.

Description: Cross Border Trade in Services

Forest engineering consulting firms incorporated under foreign law must hire Honduran nationals who are members of the Colegio de Ingenieros Forestales de Honduras in a proportion significant to the size of the project.

Sector: Veterinarians

Obligations concerned: Most-Favored Nation Treatment (4.03) National Treatment (Article 4.04) Local Presence (Article 4.05)

Measures: Ley Organica del Colegio de Veterinarios de Honduras, Article 12

Reglamento de la Ley Organica del Colegio de Medicos Veterinarios de Honduras, Article 5

Description: Cross-Border Trade in Services

Foreign companies wishing to provide veterinary services in Honduras must be incorporated under Honduran law. Foreign veterinarians may be subject to higher professional registration fees than those payable by Central American veterinarians.

Sector: Microbiologists and Cloners

Obligations Concerned: National Treatment (Article 4.04)

Measures: : Regulations for Registration of the College of Microbiologists and Cloners. Articles 5, 6 and 8

Description: Cross Border Trade in Services

Foreign microbiologists and clinicians must pay a higher fee in the registry than Honduran microbiologists and clinicians.

Sector: Notaries

Obligations Concerned: National Treatment (Article 4.04)

Measures: Decree No 277- 2002, Law of Notaries of August 16, 2002, Article 4.

Description: Cross Border Trade in Services

Notaries must be Honduran nationals.

Sector: Electric energy services

Obligations Concerned: Market access (Article 4.06)

Measures: Decree No 158- 94, Ley Marco del Sub-sector electrico, Article 23

Description: Cross-Border Trade in Services

In order to establish itself in Honduras and to be able to provide electric energy distribution services, a company must be incorporated as a commercial company with nominal shares.

Sector: Telecommunications

Obligations Concerned: Market access (Article 4.06)

Measures: Decree No 80-2003, Article 1 (3.5) Executive Decree No PCM-018-2003, dated October 2, 2003, Article 1, numeral IV(a), Decree No 109-2003 dated October 24, 2003, Article 1, numeral IV(a)

Description: Cross-border trade in services

The National Telecommunications Commission (CONATEL) may not authorize additional operators for mobile telephony until December 2005. CONATEL will authorize at least one additional operator after that date.

Sector: Public Accountants

Obligations concerned: Local Presence (Article 4.05)

Measures: Decree No 19-93, Ley Organica del Colegio de Profesionales Universitarios en Contaduría Publica, Article 23

Description: Cross-Border Trade in Services

Any person wishing to establish in Honduras and provide public accounting services must be incorporated under the laws of Honduras.

Sector: Architects

Obligations affected: Local presence (Article 4.05).

Measures: Internal Regulations of the College of Architects of Honduras, Article 7(c)and(d).

Description: Cross-Border Trade in Services

Firms organized under foreign law must designate a member of the Colegio de Arquitectos de Honduras (CAH) as their representative prior to registering with the CAH to provide architectural services in Honduras. For greater certainty, firms organized under foreign law may register only for specific projects.

## **Annex I. Schedule of Nicaragua**

Sector: Musicians and Artists

Obligations Concerned: Most-favored-nation treatment (4.03) National treatment (Article 4.04)

Measures: Law for the Promotion of National Artistic Expressions and the Protection of Nicaraguan Artists.

Law No. 215, published in La Gaceta No. 134 of July 17, 1996. Articles 14, 23, 24, 24, 25 and 31

Description: Cross Border Trade of Services

Any foreign artist or musical group, may only present shows in Nicaragua by means of previous contract. Foreign artists who perform shows or revues of commercial character, shall include in their program, the participation of a Nicaraguan artist or group of similar performance. If the artist or artistic groups do not wish to include the participation of the national artist in their program, they must pay 1% of the net income of the show to the Nicaraguan Institute of Culture, unless the country of origin of the foreign artists or groups does not impose a similar tax to Nicaraguan artists or artistic groups. Foreigners who are awarded the design and construction of public, pictorial or sculptural monuments to be erected in Nicaragua, must do so in association with Nicaraguan artists.

Sector: Tourism - Hotels, Restaurants, Tourist Guides, Rent-a-Car and other activities related to tourism.

Obligations Concerned: National treatment (Article 4.04) Local presence (Article 4.05)

Measures: Law of incentives to the tourist industry of the Republic of Nicaragua, Law No. 306, published in La Gaceta No. 117, of June 21, 1999, Articles 16.1 and 16.2

Regulation of Tourism Companies and Activities of Nicaragua, published in La Gaceta No. 99 of May 28, 2001, Articles 16 and 17

Reglamento de las Operadores de Viajes de Nicaragua, published in La Gaceta No. 100 of May 29, 2001. Article 8

Regulation that regulates the activity of the Rent a Car companies, published in La Gaceta No. 108 of June 8, 2001. Article 9

Regulation of Tourist Guides, published in La Gaceta No. 40 of February 26, 2001. Article 9

Regulation of Travel Agencies of Nicaragua, published in La Gaceta No. 96 of May 21, 2001. Article 5

Description: Cross Border Trade of Services

To provide tourist services in Nicaragua, a company must be organized under the laws of Nicaragua; and a foreign national must reside in Nicaragua or appoint a legal representative in Nicaragua. This paragraph does not apply to the provision of tourist services during a cruise. Tourist guides must be of Nicaraguan nationality.

Sector: Construction-related services

Obligations Concerned: National treatment (Article 4.04) Local presence (Article 4.05)

Measures: Ley Reguladora de la Actividad de Diseño y Construcción, Decreto No. 237 del 1 de Diciembre de 1986. Articles 2, 4 and 6

Description: Cross-Border Trade in Services

To provide construction services in Nicaragua a company must be organized in accordance with Nicaraguan law; and a foreign national must reside in Nicaragua or appoint a legal representative in Nicaragua.

Sector: Distribution of fireworks, firearms and ammunition.

Obligation Concerned: National treatment (Article 4.04) Local presence (Article 4.05)

Measures: Regulation of the National Police Law, Decree No. 26-96, published in La Gaceta No. 32 of February 14, 1996. Article 76 and Article 77

Description: Cross Border Trade of Services

To commercialize fireworks, firearms and ammunition in Nicaragua, a foreign company must be organized in accordance with Nicaraguan law; and a foreign national must reside in Nicaragua.

Sector: Private Security Service

Obligations Concerned: National treatment (Article 4.04) Local presence (Article 4.05)

Measures: Manual de la Vigilancia Civil, No. 001 del 6 de Julio de 1998. Article 6

Description: Cross Border Trade in Services

A company must be established in Nicaragua to operate as a private security guard company. Natural persons serving as armed guards must be of Nicaraguan nationality.

Sector: Sound Broadcasting, Free Reception Television

Obligation Concerned: National Treatment (Article 3.04 and 4.04)

Measures: Law of Amendment to Law No. 200, "General Law of Telecommunications and Postal Services",

Law No. 326 Published in La Gaceta No. 244 of December 22, 1999. Article 1,

Regulation of the Television Broadcasting Service. Administrative Agreement No. 07-97, Published in La Gaceta No. 228, of

November 28, 1997. Article 12

Description: Investment and Cross-Border Trade in Services

A license to operate free reception radio broadcasting and television transmission services (known in Nicaraguan legislation as "media de comunicacion social"), shall only be granted to Nicaraguan persons. In the case of companies, Nicaraguan nationals must own fifty-one percent (51%) of the capital.

Sector: Communications - Professional Broadcasting and Television.

Obligations Concerned: Most favored nation treatment (Article 4.03) National treatment (Article 4.04)

Measures: In radio and television stations of the country, only Nicaraguan announcers may be used for the narration of sports programs. Decree No. 66, published in La Gaceta No. 256 of November 10, 1972. Articles 1 and 3

Description : Cross Border Trade of Services

Companies providing radio and television broadcasting services in Nicaragua may only use the professional services of Nicaraguan announcers for the narration, commentary and live broadcasting of sports or commercial programs of the same nature. Notwithstanding the foregoing, foreign women may work as announcers if the laws in their own countries permit Nicaraguan nationals to provide such services. The provisions of this measure shall not apply to the broadcasting of programs by foreign announcers whose transmission of such programs is directed exclusively to other countries.

Sector: Electricity Distribution

Obligations Concerned: Local presence (Article 4.05)

Measures: Ley de la Industria Electrica. Law No. 272, published in La Gaceta No.74 of April 23, 1998. Articles 4 and 76

Description: Cross-Border Trade in Services

To engage in the distribution of electric power, an enterprise must be organized under the laws of Nicaragua.

Sector: Western Mining Services - Hydrocarbons

Obligations Concerned: Local Presence (Article 4.05)

Measures: Special Law for the Exploration and Exploitation of Hydrocarbons. Law No. 286, published in La Gaceta No. 109 of June 12, 1998. Article 11

Regulation to the Special Law for the Exploration and Exploitation of Hydrocarbons, Decree No. 43-98, published in La Gaceta No. 117 of June 24, 1998. Articles 5 and 6

Description: Cross Border Trade in Services

A company that provides hydrocarbon exploration and analysis services must be organized under the laws of Nicaragua. Foreigners wishing to perform hydrocarbon research studies, such as geological, geophysical, topographical pianos survey, seismic works or geochemical studies must designate a legal representative with permanent domicile in Nicaragua.

Sector: Western Mining Services -Metallic and non-metallic minerals

Obligations Concerned: Local presence (Article 4.05)

Measures: Regulation of Law No. 387, Special Law for the Exploration and Exploitation of Mines, Decree No. 119 -2001, published in La Gaceta No. 4 of January 7, 2002. Article 31

Description: Cross-Border Trade in Services

To obtain a concession for the exploration of metallic and non-metallic minerals in Nicaragua, a foreign company must be organized in accordance with Nicaraguan legislation; and a foreign national not resident in Nicaragua, must appoint a legal representative domiciled in Managua, Nicaragua.

Sector: Fishing, aquaculture, and fishing-related activities

Obligations Concerned: National treatment (Articles 3.04 and 4.04) Performance requirements (Article 3.07) Local presence (Article 4.05)



Measures: Ley de Licitación Pública de Licencias y Concesiones Pesqueras, Ley No. 165, promulgated February 22, 1994. Article 6

Special Law on Fishing Exploitation, Decree No. 557, published in La Gaceta No. 32 of February 7, 1961. Article 2 and 9

Regulations for Fishing and Aquaculture in Nicaragua, Ministerial Agreement DGRN-PA. No. 359-2004, Art. 11 and 78

Description: Investment and Cross-Border Trade in Services

Processing, packaging and other services related to fishery products must be carried out by companies organized under Nicaraguan laws and licensed in Nicaragua. Processing and packaging for export of fishery products caught in Nicaraguan territorial waters must be carried out in companies in Nicaragua. Only Nicaraguans may perform artisanal fishing when it is carried out for subsistence purposes as a family business.

Sector: Land Transportation

Obligations Concerned: Most-favored-nation treatment (Article 4.03) National treatment (Article 4.04) Local presence (Article 4.05)

Measures: Ley General de Transporte, Decreto No. 164, published in La Gaceta No. 34, February 17, 1986, Article 2

Regulatory Law for the Issuance and Obtaining of Operating Licenses in Land Transportation, Decree No. 1140, published in La Gaceta No. 280, November 30, 1982, Article 7

Ministry of Construction and Transportation, dated November 12, 1990

Description: Cross-Border Trade in Services

An enterprise must be established in Nicaragua to provide land transportation of cargo or passengers from one point to another within Nicaragua. An enterprise organized under the laws of a foreign country may provide international land transportation of cargo or passengers to the extent that a specific agreement between such country and Nicaragua provides for reciprocal treatment of enterprises organized under the laws of Nicaragua. Notwithstanding the foregoing, only Nicaraguan persons may provide collective land transportation services within Nicaragua.

Sector: Maritime Transport

Obligations Concerned: National treatment (Article 4.04)

Measures: Ley de Transporte Acuático No. 399 published in La Gaceta No. 166 of September 3, 2001. Articles 44, 45 and 48

Regulatory Law for the Pilotage Service, Decree No. 15-49, published in La Gaceta No. 4 of January 5, 1985. Article 64

Description: Cross-Border Trade in Services

To act as a shipowner or shipping company in Nicaragua, a natural person must be a national of Nicaragua and a company must be organized under the laws of Nicaragua. To operate as a shipping agent, general shipping agent or shipping agent consignee of vessels, a natural person must be a Nicaraguan national and a company must be organized under the laws of Nicaragua. Only Nicaraguan nationals or a company established in Nicaragua may obtain a route concession to engage in maritime transportation, cabotage is reserved exclusively for companies established in Nicaragua, and only Nicaraguan nationals may be appointed as official pilots of any port in Nicaragua.

Sector: Ports

Obligations Concerned: Market access (Article 4.06)

Measures: Creation of the Empresa Portuaria Nacional Decree No. 35-95 published in La Gaceta No. 119 of June 27, 1995. Articles 6 and 7

Description: Cross Border Trade of Services

The administration and operation of the existing ports of national interest (Corinto, Sandino, San Juan del Sur, Cabezas, El Rama and El Bluff) is reserved to the Empresa Portuaria Nacional (EPN).

Sector: Air Transportation - Repair and Maintenance Services Specialized Air Services

Obligations Concerned: Most favored nation treatment (Article 4.03) National treatment (Article 4.04) Local presence (Article 4.05)

Measures: Civil Aviation Code. Decree No. 176, published on November 22, 1956, with Errata of September 3, 1957, Articles 32, 120, 121

Reglamento para la Aviación Agrícola, Decree No. 36-A. Published in La Gaceta No. 136 of June 19, 1962. Articles 11 and 13

Description: Cross Border Trade in Services

Authorization from the Dirección General de Aeronautica Civil is required for the supply of specialized air services and aircraft repair services in the territory of Nicaragua. To perform private air services for remuneration it is required to be a Nicaraguan national or a company organized under the laws of Nicaragua. For greater certainty, private aerial services include: a) Aerial works such as aerial photography, aerial photography, commercial advertising and other similar; b) Agricultural fumigation services; c) Industrial activities, other than public transportation; d) Scientific applications of civil aviation, such as educational flights, determination of the trajectory of hurricanes and migratory birds, and other similar activities. The flight personnel involved in aviation activities for agricultural purposes within the national territory must be Nicaraguan nationals. Likewise, the aircraft used for such purpose, must be of Nicaraguan registry. Only Nicaraguan technical personnel may exercise in Nicaragua the remunerated services of repair and maintenance, or specialized aerial services. In the absence of such personnel, the Directorate General of Civil Aeronautics may allow pilots or other foreign technical personnel to exercise such activity, giving preference to foreign pilots or other foreign technical personnel, giving preference in this case to personnel who are nationals of other Central American countries.

Sector: Air Transport

Obligations Concerned: National Treatment (Article 3.04) Senior Management and Boards of Directors (Article 3.08)

Measures: Civil Aviation Code. Decree No. 176, published on November 22, 1956, with Errata of September 3, 1957. Articles 75, 120 and 121

Description: Investment

Only companies organized under Nicaraguan law shall be granted licenses to engage in air transportation services. At least 51% of the capital must be owned by Nicaraguans, who must have effective control of the company and be in senior management positions of the company. To perform remunerated private air transportation services, it is required to be a Nicaraguan national or a company incorporated under Nicaraguan law.

Sector: Professional Services

Obligations Concerned: Most favored nation treatment (Article 4.03) National treatment (Article 4.04) Local presence (Article 4.05)

Measures: Law of Incorporation of Professionals in Nicaragua, Decree No. 132 published in La Gaceta No. 47 of November 2, 1979. Article 5

Description: Cross-Border Trade in Services

Foreign professionals may practice in Nicaragua in the manner and subject to the same conditions as Nicaraguans are permitted to practice in their country of origin. Nicaragua agrees that, if the jurisdiction in a foreign country permits Nicaraguan nationals to apply for and receive the licenses or certificates necessary to practice a profession in such jurisdiction, a foreigner with a license or certificate to practice the profession in such jurisdiction shall also be permitted to apply for and receive a license or certificate necessary to practice in Nicaragua. In addition, the relevant professional association in Nicaragua shall recognize a license granted by a foreign jurisdiction and permit the licensee to register with the association and practice the profession in Nicaragua based on the foreign license in the following cases: (a) no academic institution in Nicaragua offers a curriculum that would permit the practice of the profession in Nicaragua; (b) the licensee is a recognized expert in his profession; or (c) permitting the professional to practice in Nicaragua will further, through training, demonstration, or other similar opportunity, the development of the profession in Nicaragua.

Sector: Public accounting and auditing services rendered to enterprises

Obligations Concerned: National treatment (Article 4.04) Local presence (Article 4.05)

Measures: Law for the Practice of Public Accounting. Law No. 6 published in La Gaceta on April 30, 1959. Article 19

Description: Cross Border Trade of Services

Foreign firms of public accountants, auditors and accountants, in their individual or social character may practice the profession in Nicaragua, or any activity related thereto, through a Nicaraguan firm or association of licensed public

accountants.

Sector: Professional Services - Notarial Profession

Obligations Concerned: Most-favored-nation treatment (Article 4.03) National treatment (Article 4.04)

Measures: Law of November 19, 1938, published in La Gaceta No. 267 of December 10, 1938, Article 1

Notarial Law, Annex to the Nicaraguan Code of Civil Procedure. Article 10

Description: Cross Border Trade of Services

Notaries Public must be Nicaraguans of origin authorized by the Supreme Court of Justice to practice this profession. Central American nationals by birth authorized to practice law in Nicaragua who have at least five years of residence in Nicaragua may also obtain this authorization, provided that they are authorized to practice notary public in their country and that Nicaraguans are authorized to act as notaries public in their respective countries.

Sector: Customs Agents

Obligations Concerned: Most favored nation treatment (Article 4.03) National treatment (Article 4.04) Local presence (Article 4.05)

Measure: Law establishing the Self-clearance for Import, Export and other Regimes, Law No. 265, published in La Gaceta No. 219 of November 17, 1997, Articles 49, 50 and 52

Description: Cross Border Trade in Services

Customs agents must be Nicaraguan nationals or foreigners from a country that allows Nicaraguan nationals to act as customs agents. A company operating as a customs agent in Nicaragua must be organized under Nicaraguan law and at least one officer of the customs company must have a valid license.

Sector: Scientific research services

Obligation Concerned: Local presence (Article 4.05)

Measures: General Law on Exploitation of Our Wealth. Decree No. 316, published in La Gaceta on April 17, 1958. Article 83

Description: Cross Border Trade of Services

A foreign national, in order to carry out scientific research activities related to natural resources, must have a legal representative in Nicaragua during the entire time the research is carried out.

Sector: Active Improvement Zones Regime and Free Trade Zones

Obligations Concerned: Performance requirements (Article 3.07)

Measures: Regulations of the Decree of Industrial Export Processing Zones, Decree No. 31-92 published in La Gaceta No. 112 of June 12, 1992, Articles 22 and 67

Description: Investment

An enterprise authorized to operate in a free zone may introduce up to 40 percent of its production by volume into Nicaraguan territory after payment of duties and taxes, depending on whether it falls under category A (or "first category"), B (or "second category"), or C (or "third category"). Nicaragua will apply this measure consistent with its obligations under the Agreement on Subsidies and Countervailing Measures of the World Trade Organization.

Sector: Mapping

Obligations Concerned: Market Access (Article 4.06)

Measures: Ley Organica del Instituto Nicaraguense de Estudios Territoriales (INETER), Ley No 311 published in La Gaceta No. 103 of July 28, 1999. Article 4

Description: Cross Border Trade in Services

It is the responsibility of the Nicaraguan Institute of Territorial Studies (INETER) to elaborate, draw, edit and publish official, cadastral, urban and rural maps, as well as thematic maps and hydrographic, nautical and aeronautical charts of Nicaragua

at different scales.

Sector: Potable Water, Sanitary Sewerage, Sewage Collection and Sewage Disposal.

Obligations Concerned: Market Access (Article 4.06)

Measures: Law for the Creation of the Nicaraguan Water and Sewerage Company (ENACAL), Law No. 276, published in La Gaceta No. 12 of January 20, 1998, Article No. 3

Law of Suspension of Water Use Concessions, Law No. 440, Articles 2 and 3

Description: Cross-Border Trade in Services

The establishment, construction and operation of public works for the supply and distribution of potable water, and the collection and disposal of sewage, may only be carried out by the Nicaraguan Water and Sewerage Company, (ENACAL). ENACAL is the State entity responsible for providing potable water and collecting and disposing of liquid waste and has the following functions: (a) To collect, treat, conduct, store, distribute and commercialize potable water; and to collect, treat and finally dispose of liquid waste. (b) To purchase raw water, buy and sell potable water, as well as to market the services of collection, treatment and final disposal of liquid waste. (c) To take all necessary measures so that the residual discharges of treated liquids minimize environmental impact. (d) To prepare the Company's expansion plan for the short, medium and long term (e) Research, explore, develop and exploit water resources and any other activity necessary for its development.

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Sector: Airport

Obligations Concerned: Market Access (Article 4.06)

Measures: Law of the Administrative Company of International Airports, Decree No. 1292 published in La Gaceta No. 186 on August 16, 1983, Article 3

Description: Cross Border Trade of Services

Corresponds to the Empresa Administradora de Aeropuertos Internacionales (EAAI) the establishment, operation, administration, performance of works and rendering of services in international airports.

Sector: Energy

Obligations Concerned: Market Access (Article 4.06)

Measures: Electricity Industry Law, Law No. 272 published in the Gazette No. 74 of April 23, 1998, Articles 27 and 58

Description: Cross-Border Trade in Services

Electricity transmission services may only be performed by the National Load Dispatch Center.

Sector: Lottery Administration

Obligations Concerned: Market Access (Article 4.06)

Measures: Internal Regulations of the National Lottery, published in La Gaceta No. 229 of December 3, 1996, Articles 4 and 5

Description: Cross-Border Trade of Services

Only the Lotería Nacional, a company owned by the State, may carry out the activities of administration of lotteries, raffles, raffles, promotions, and games of chance for money or in kind. Notwithstanding the foregoing, commercial promotions are permitted with the prior authorization of the National Lottery, which will be freely granted.

Sector: Social communication services

Obligations Concerned: Market access (Article 4.06)

Measures: General Law of Telecommunications and Postal Services, Law No. 200, published in La Gaceta Diario Oficial No. 154 of August 18, 1995, Article 118

Description: The issuance, financing and commercialization of postage stamps, as well as the use of franking machines and other analogous systems, is reserved to Correos de Nicaragua.

## **Annex II. Future Measures**

### **Explanatory Note**

1. The Schedule of a Party to this Annex sets out, in accordance with Articles 3.09 (Reservations and Exceptions) and 4.07 (Reservations and Exceptions), the sectors, subsectors, or specific activities for which that Party may maintain existing measures, or adopt new or more restrictive measures, that are inconsistent with the obligations imposed by:

- a) Articles 3.04 (National Treatment); or 4.04 (National Treatment);
- b) Articles 3.05 (Most-Favored-Nation Treatment); or 4.03 (Most-Favored-Nation Treatment);
- c) Article 3.07 (Performance Requirements);
- d) Article 3.08 (Senior Management and Boards of Directors);
- e) Article 4.05 (Local Presence);
- f) Article 4.06 (Market access).

2. Each Schedule entry sets forth the following elements:

- a) Sector refers to the sector for which the entry has been made;
- b) Obligations Concerned specifies the obligation or obligations referred to in paragraph 1 which, by virtue of Articles 3.09 (Reservations and exceptions) and 4.07 (Reservations and Exceptions), do not apply to the sectors, subsectors or activities listed on the fiche;
- c) Description indicates the coverage of the sectors, subsectors or activities covered by the schedule; and
- d) Measures in Force identifies, for transparency purposes, the measures in force that apply to the sectors, subsectors or activities covered by the schedule.

3. Pursuant to Articles 3.09 (Reservations and Exceptions) and 4.07 (Reservations and Exceptions), the Articles of this Treaty specified in the Obligations Affected element of a schedule do not apply to the sectors, subsectors and activities identified in the Description element of that schedule.

## **Annex II. Schedule of Costa Rica**

Sector: All Sectors

Obligations Concerned: Most favored nation treatment (Articles 3.05 and 4.03)

Description: Investment and Cross-Border Trade in Services.

Costa Rica reserves the right to adopt or maintain any measure granting differential treatment to countries under any bilateral or multilateral international treaty in force or entered into after the date of entry into force of this Agreement with respect to: a) aviation; b) fisheries; and c) maritime matters, including salvage.

Sector: Cultural Industries

Obligations Concerned: Most-Favored-Nation Treatment (Articles 3.05 and 4.03)

Description: Investment and Cross-Border Trade in Services

Costa Rica reserves the right to adopt or maintain any measure that grants differential treatment to countries under any existing or future bilateral or multilateral international treaties with respect to cultural industries, such as audiovisual cooperation agreements. For greater certainty, government support programs through subsidies for the promotion of cultural activities are not subject to the limitations or obligations of this Agreement. Cultural industries means persons engaged in any of the following activities: a) the publication, distribution or sale of books, magazines, periodicals, or printed or electronic newspapers, excluding the printing and typesetting of any of the foregoing; b) the production, distribution, sale or exhibition of audio or video recordings; c) the production, distribution, sale or exhibition of audio or video recordings of music; d) the production, distribution, or sale of machine-readable printed music; or e) radio broadcasting for the general public, as well as all activities related to radio, television and cable transmission, satellite programming services and transmission networks.

Sector: Social Services

Obligations Concerned: National Treatment (Articles 3.04 and 4.04) Most-Favored-Nation Treatment (Articles 3.05 and 4.03) Performance Requirements (Article 3.07) Senior Management and Boards of Directors (Article 3.08) Local Presence (Article 4.05) Market Access (Article 4.06)

Description: Investment and Cross-Border Trade in Services

Costa Rica reserves the right to adopt or maintain any measure with respect to the performance of leyes and the supply of social readaptation services such as the following services, to the extent that they are social services that are established or maintained in the public interest: income insurance or security, social security services, social welfare, public education, public training, health, child care, public sewerage services, and water supply services.

## **Annex II. Schedule of El Salvador**

Sector: All Sectors

Obligations Concerned: Most-Favored-Nation Treatment (Articles 3.05 and 4.03)

Description: Investment and Cross-Border Trade in Services

El Salvador reserves the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral international treaty in force or to be concluded after the date of entry into force of this Agreement with respect to: a) aviation; b) fisheries; and c) maritime affairs, including salvage.

Sector: Social Services

Obligations Concerned: National Treatment (Articles 3.04 and 4.04) Most-Favored-Nation Treatment (Articles 3.05 and 4.03) Performance Requirements (3.07) Senior Management and Boards of Directors (3.08) Local Presence (Article 4.05) Market Access (4.06)

Description: Investment and Cross-Border Trade in Services

El Salvador reserves the right to adopt or maintain any measure with respect to the execution of leyes and social readaptation services such as the following services, insofar as they are social services that are established or maintained for reasons of public interest: pensions, unemployment insurance, social security services, social welfare, public education, public training, health and childcare.

Sector: Minority Issues

Obligations Concerned: National Treatment (Articles 3.04 and 4.04) Performance Requirements (3.07) Senior Management and Boards of Directors (3.08) Local Presence (Article 4.05)

Description: Investment and Cross-Border Trade in Services

El Salvador reserves the right to adopt or maintain any measure that grants rights or preferences to socially or economically disadvantaged minorities.

## **Annex II. Schedule of Guatemala**

Sector: All Sectors

Obligations Concerned: Most-Favored-Nation Treatment (Articles 3.05 and 4.03)

Description: Investment and Cross-Border Trade in Services

Guatemala reserves the right to adopt or maintain any measure providing for different treatment between countries under any international agreement in force or entered into after the date of entry into force of this Agreement involving: a) aviation; b) fisheries; and c) maritime affairs, including salvage.

Sector: Maritime Transport

Obligations Concerned: National Treatment (Articles 3.04 and 4.04) Most-Favored-Nation Treatment (Articles 3.05 and 4.03) Performance Requirements (Article 3.07) Senior Management and Boards of Directors (Article 3.08) Local Presence (Article 4.05)

Description: Investment and Cross-Border Trade in Services

Guatemala reserves the right to adopt or maintain any measure related to maritime transport services provisions.

Sector: Issues Related to Minorities and Disadvantaged Indigenous Populations

Obligations Concerned: National Treatment (Articles 3.04 and 4.04) Performance Requirements (Article 3.07) Senior Management and Boards of Directors (Article 3.08) Local Presence (Article 4.05)

Description: Investment and Cross-Border Trade in Services

Guatemala reserves the right to adopt or maintain any measure that guarantees rights or preferences for indigenous, socially and economically disadvantaged minorities and populations.

## **Annex II. Schedule of Honduras**

Sector: Communication Services - Telecommunications.

Obligations Concerned: National Treatment (Article 3.04) Market Access (Article 4.06).

Description: Investment and Cross-Border Trade in Services

Honduras reserves the right to adopt, maintain, or modify the level of ownership interest in Empresa Hondureña de Telecomunicaciones (HONDUTEL), as well as its affiliates or subsidiaries.

Sector: All sectors

Obligations Concerned: Most-Favored Nation Treatment.(Articles 3.05 and 4.03).

Description: Investment and Cross-Border Trade in Services

Honduras reserves the right to adopt or maintain any measure that grants different treatment to countries under any bilateral or multilateral international treaty in force or to be signed after the date of entry into force of this Agreement with respect to: a) aviation; b) fisheries; or c) maritime affairs, including salvage.

Sector: Agricultural Engineers

Obligations Concerned: Most-Favored-Nation Treatment (Article 4.03) National Treatment (Article 4.04) Local Presence (Article 4.05)

Description: Cross-Border Trade in Services

Honduras reserves the right to adopt or maintain any measure that applies to the compulsory professional registration of agricultural engineers.

Sector: Social Workers

Obligations Concerned: National Treatment (Article 4.04)

Description: Cross-Border Trade in Services

Honduras reserves the right to adopt or maintain any measure that applies to the compulsory professional registration of social workers.

Sector: Medical and pharmaceutical products

Obligations Concerned: Most-favored-nation treatment (Article 4.03) National treatment (Article 4.04) Local presence (Article 4.05)

Description: Cross-Border Trade in Services

Honduras reserves the right to adopt or maintain any measure that applies to the compulsory professional registration of chemists and pharmacists.

Sector: Social Services

Obligations Concerned: Senior Management and Boards of Directors (Article 3.08) Most-Favored-Nation Treatment (Article

4.03) National Treatment (Article 4.04) Local Presence (Article 4.05) Market Access (Article 4.06)

Description: Investment and Cross-Border Trade in Services Honduras reserves the right to adopt or maintain any measure with respect to the application and implementation of laws, and the provision of social readaptation services; as well as the following services to the extent that they are social services that are established or maintained for reasons of public interest; pensions, unemployment insurance, social security services, pension fund services, social welfare, public education, public training, health and child care.

Sector: Minority-Related Matters.

Obligations Concerned: National Treatment (Article 3.04 and 4.04) Performance Requirements (Article 3.07) Senior Management and Administration (Article 3.08) Local Presence (Article 4.05) Boards of Directors (Article 4.05)

Description: Investment and Cross-Border Trade in Services

Honduras reserves the right to adopt or maintain any measure that grants rights or preferences to socially and economically disadvantaged minorities.

## **Annex II. Schedule of Nicaragua**

Sector: All Sectors

Obligations Concerned: National Treatment (Article 3.04) Senior Management and Boards of Directors (Article 3.08)

Description: Investment

Nicaragua reserves the right to limit the transfer or disposition of any interest in an existing state enterprise to the effect that only Nicaraguan nationals may receive such interest. However, the foregoing provision applies only to the initial transfer or disposition of such interest. Nicaragua does not reserve this right with respect to subsequent transfers or dispositions of such interest. Nicaragua reserves the right to limit control of any new enterprise created by the transfer or disposition of any interest described in the preceding paragraph by means other than limitations on the ownership of the interest. Nicaragua further reserves the right to adopt or maintain any measure relating to the nationality of senior management and members of the board of directors of such new enterprise.

Sector: Minority and indigenous peoples' issues

Obligations Concerned: National treatment (Articles 3.04 and 4.04) Most-favored-nation treatment (Articles 3.05 and 4.03) Performance requirements (Article 3.07) Senior management and boards of directors (Article 3.08) Local presence (Article 4.05)

Description: Investment and Cross-Border Trade in Services

Nicaragua reserves the right to adopt or maintain any measure that grants rights or preferences granted to socially or economically disadvantaged minorities and indigenous peoples.

Sector: Communications

Obligations Concerned: Most-Favored-Nation Treatment (Articles 3.05 and 4.03).

Description: Investment and Cross-Border Trade in Services

Nicaragua reserves the right to adopt or maintain any measure that grants differential treatment to persons of other countries due to the application of reciprocal measures or through international agreements involving radio spectrum sharing, guaranteed market access or national treatment with respect to one-way satellite transmission of direct-to-home (DTH) and direct broadcasting (DBS) television and audio-digital services.

Sector: All Sectors

Obligations Concerned: Most-Favored-Nation Treatment (Articles 3.05 and 4.03)

Description: Investment and Cross-Border Trade in Services

Nicaragua reserves the right to adopt or maintain any measure that accords different treatment to countries under any bilateral or multilateral international treaty in force or entered into after the date of entry into force of this Agreement with respect to: a) aviation; b) fisheries; or c) maritime affairs, including salvage.



Sector: Coastal Land, Islands and River Banks

Obligations Concerned: National Treatment (Article 3.04)

Description: Investment

Nicaragua reserves the right to adopt or maintain any measure with respect to coastal land, islands and river banks in Nicaragua's possession.

Sector: Social Services

Obligations Concerned: National Treatment (Articles 3.04 and 4.04) Most-Favored-Nation Treatment (Articles 3.05 and 4.03) Performance Requirements (Article 3.07) Senior Management and Boards of Directors (Article 3.08) Local Presence (Article 4.05)

Description: Investment and Cross-Border Trade in Services

Nicaragua reserves the right to adopt or maintain any measure with respect to the performance of correctional leyes and services, and the following services to the extent that they are services to be established or maintained for reasons of public interest: unemployment insurance, social insurance and social security, social welfare, public education, public training, health and child care.